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PROTECTION OF MINORITIES

Report of the Working Group on Minorities on its second session
(Geneva, 30 April-3 May 1996)

Chairman-Rapporteur: Mr. Asbjørn Eide

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Introduction

1. The creation of the working group on minorities was recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1994/4 of 19 August 1994, authorized by the Commission on Human Rights in its resolution 1995/24 of 3 March 1995, and endorsed by the Economic and Social Council in its resolution 1995/31 of 25 July 1995.

2. In that resolution the Council authorize the Sub-Commission to establish, initially for a three-year period, an inter-sessional working group consisting of five of its members to meet each year for five working days in order to promote the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and in particular to:

(a) Review the promotion and practical realization of the Declaration;

(b) Examine possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments;

(c) Recommend further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

3. In compliance with the above-mentioned resolutions, the Working Group on Minorities held its second session at the United Nations Office at Geneva from 30 April to 3 May 1996. It held eight public and two informal meetings.

I. ORGANIZATION OF THE SESSION

A. Election of officers

4. It will be recalled that at the 1st meeting of its first session, on 28 August 1995, the Working Group elected Mr. Asbjørn Eide (Norway) as Chairman-Rapporteur for the three-year period of the mandate of the Working Group.

B. Attendance

5. The session was attended by the following independent experts members of the Sub-Commission as decided by the Sub-Commission at its forty-seventh session (decision 1995/119): Mr. Mohammed Sardar Ali Khan, Mr. José Bengoa, Mr. Stanislav Chernichenko, Mr. Asbjørn Eide and Mr. Ahmed Khalil. It was also attended by Ms. Erica-Irene Daes and Mr. Roan Maxim.

6. The following States Member of the United Nations were represented by observers: Algeria, Austria, Azerbaijan, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Israel, Italy, Japan, Latvia, Libyan Arab Jamahiriya, Mexico, Myanmar, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines,

Poland, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

7. The following non-Member States were represented by observers: Holy See and Switzerland.

8. The following United Nations bodies and specialized agencies and intergovernmental organizations were represented during the session: Office of the United Nations High Commissioner for Refugees; United Nations Research Institute for Social Development, International Labour Organization, United Nations Educational, Scientific and Cultural Organization; Council of Europe, International Organization for Migration, Organization for Security and Cooperation in Europe.

9. The following non-governmental organizations in consultative status with the Economic and Social Council were represented: Category II: Arab Lawyers Union, Baha'i International Community, Federal Union of European Nationalities, France-Libertés: Fondation Danielle Mitterand, International Alert, International Service for Human Rights, Lutheran World Federation; Pax Christi International, Roster: Centre Europe Tiers-Monde, International Human Rights Association of American Minorities, International Movement Against All Forms of Discrimination and Racism, Minority Rights Group, World Association for School as an Instrument of Peace.

10. Other non-governmental organizations included the following: Arab Association for Human Rights, Anti-Racism Information Service, Association des Assyro-chaldéens de France, Association for the Prevention of Torture, Assyrian Democratic Organization, Assyrian Universal Alliance, Congress of Basque Culture, Burma Peace Foundation, Committee on the Administration of Justice, Democratic Alliance of Hungarians in Romania, Espacio Afroamericano, European Roma Rights Centre, Friends of Kashmir, Geledes, Human Rights Association, Human Rights International, Ibn Khaldoun Centre for Development Studies, Indo-European Kashmir Forum, Inter-Africa Group, Institut Roumain pour les droits de l'homme, International Centre for Ethnic Studies, International Centre for Law and Development, International Organization for the Development of Freedom of Education, Islander Civil Movement, Jesuit Refugee Service, Latvian Human Rights Committee, Legal Information Centre for Human Rights, Liberal International, Mejlis of the Crimean Tatar People, Mohajir Quami Movement, Movement for the Survival of the Ogoni People, Romanian Institute for Human Rights, Russian Cultural-Educational Society of Georgia, Sasakawa Peace Foundation, Sikh Human Rights Group, Synergies Africa, Tamil United Liberation Front, Unrepresented Nations and Peoples Organization, Youth Resource Centre on Human Rights.

11. The following scholars participated in the Working Group: Ms. Monica Castelo, Professor Edward Chaszar, Professor Fernand de Varennes, Ms. Nazila Ghanea, Professor Hurst Hannum, Ms. Virginia Leary, Mr. Sean Magee, Professor Patrick Thornberry, Professor Joseph Yacoub, Ms. Alexandra Xanthaki.

C. Documentation

12. The documents before the Working Group are listed in annex I and the documents submitted and interventions made in writing to the Working Group are listed in annex II.

D. Organization of work

13. At its informal meeting on 29 April 1996, the Working Group adopted the following agenda:

1. Adoption of the agenda.

2. Organization of work

3.(a) Reviewing the promotion and practical realization of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

(b) Examination of possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and Governments.

(c) Recommendations for further measures, as appropriate, for the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities.

4. Questions of definitions, attributes and categorizations of minorities.

5. The future role of the Working Group.

6. Other matters.

14. In his opening statement, the High Commissioner for Human Rights reaffirmed the commitment of the international community in the field of minority protection and recalled the resolutions of the various legislative bodies of the United Nations relating to the promotion and protection of the rights of persons belonging to minorities. He expressed his willingness to facilitate the coordination among the various organs and bodies of the United Nations to strengthen the protection of minorities. His Office was in the process of establishing a programme of international activities regarding minorities focusing on the relevant international standards, education campaigns, and the establishment of commissions for the improvement of community relations as a possible conflict-resolution mechanism. He highlighted the preventive activities of his Office and noted that expert advice concerning capacity-building at the national and local levels was provided. A task force had been set up to address these issues. The High Commissioner concluded by reaffirming his cooperation and that of the Centre in support of the activities of the Working Group and the implementation of its recommendations.

15. The Chairman-Rapporteur, in his statement, reiterated that participation was open to government observers, specialized agencies and other United Nations bodies, regional and non-governmental organizations and scholars. The Chairman stressed that the Working Group should be considered as a workshop and that procedures should therefore be more flexible than in other United Nations forums. As for the purpose and mandate of the Working Group, the Chairman highlighted the search for peaceful and constructive solutions to situations involving minorities and means to promote peaceful accommodation of the different groups within society, while respecting the territorial integrity and political independence of States. He stressed that the basis for the work of the Working Group was the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (hereafter referred to as the "Declaration"), whose core message was that the existence and identity of all groups shall be promoted and protected. He encouraged participants, in the discussions on the various agenda items to refer to particular principles contained in the Declaration and the ways in which the content and scope of the rights contained therein could be better defined, understood and interpreted. In conclusion, the Chairman-Rapporteur underscored once again that information should not be provided in the form of complaints but that constructive dialogue should be encouraged and information about positive experiences brought to the attention of the Working Group.

II. REVIEWING THE PROMOTION AND PRACTICAL REALIZATION OF THE DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

A. Introductory remarks

16. Professor Thornberry reaffirmed that the Declaration must remain the major focus of minority rights, and that the Working Group should develop an understanding of it. The observer for the International Human Rights Association of American Minorities wondered whether minority rights constituted an effective tool for the promotion of international peace and conflict resolution or whether they merely served to exacerbate nationalist tendencies, thereby threatening the integrity of States and fomenting conflict. Professor Yacoub expressed his conviction that minorities could use the Declaration to legitimize their claims, thus reducing their desire to undermine the territorial integrity and political independence of States. He stressed the need to focus on the implementation of the principles contained in the Declaration as almost all States had adopted constitutional measures recognizing the existence and identity of minorities but in practice the rights of persons belonging to minorities were not yet effectively guaranteed.

17. The observer for the International Centre for Ethnic Studies mentioned that in order to effectively review the promotion and practical realization of the Declaration, it was important for the Working Group to receive concrete information on minority situations in different contexts, especially with reference to constitutional arrangements, national legislation and State practices, in order to expand, refine and give further meaning to the rights contained in the Declaration.

B. At the national level

1. Constitutional and main legal provisions protecting the existence and identity of minorities (art. 1.1 of the Declaration)

18. Information was provided by observers for Governments and non-governmental organizations on the constitutional and legal provisions protecting the existence and identity of minorities, including their characteristics such as language, culture and religion. The observers for Hungary and the Office of the United Nations High Commissioner for Refugees gave examples as to how the Declaration could be used to strengthen legislative and constitutional minority protection, and a number of non-governmental organizations referred to country situations where the constitutional and legal provisions did not as yet fully protect the existence and identity of minorities.

19. The observer for Ukraine stated that the legislative acts which protected the national, cultural, linguistic and religious minorities included the Declaration on the Rights of Nationalities of Ukraine, laws on national minorities, languages, citizenship, refugees, migration, freedom of association and freedom of conscience and religion, and basic legislation on culture. It was necessary to ensure that the legislative acts were enforced through an efficient implementation mechanism.

20. The observer for Norway provided information about the measures and legal provisions adopted to protect the existence and identity of the Sami people, their language, culture and way of life.

21. The observer for the International Centre for Ethnic Studies referred to the Indian Constitution which provided all citizens with equal opportunity regarding education and employment, irrespective of, inter alia, language, race or caste, and granted minorities the right to conserve their distinct language or culture and the right to establish and administer educational institutions. The Sri Lankan Constitution recognized the right of citizens to profess and practise religions other than Buddhism, and Tamil and Sinhalese are both official languages. The Constitutions of Pakistan and Bangladesh recognized the religious laws and customs of non-Muslim minorities and, in addition, the Pakistani Constitution enjoined the State to "safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services".

22. The observer for Hungary stated that the Declaration had served as a useful source of reference when drafting the Law on National and Ethnic Minorities. In this respect a special codification committee and a round table composed of minority representatives living in Hungary participated not only in the preparation and drafting of the text but also in the preliminary conceptual discussions. The adoption of the Law was followed in 1994 by elections for minority self-governments which acted as legitimate partners of the Government in resolving concrete issues relating to minorities, and in 1995, by the election of the parliamentary ombudsman for minority rights.

23. The observer for UNHCR mentioned that through its field presence and protection activities, UNHCR could play an effective supervisory and enforcement role in the application of, inter alia, the standards contained in the Declaration. Particular reference was made to the work with government and NGO counterparts in the development of domestic laws and the promotion of national human rights institutions, especially in the field of legislation on minority rights, and advocating and advising on nationality laws.

24. A number of observers for NGOs mentioned specific country situations where constitutional and legal provisions protecting the existence and identity of minorities remained weak in respect of: the Palestinian minority in Israel (Arab Association for Human Rights); the situation faced by the Assyrian minority in Iraq and Turkey (Assyrian Universal Alliance and the Association des Assyro-chaldéen de France); the national minorities in Georgia and Abkhazia (Russian Cultural-Educational Society of Georgia); the status of non-citizens in Latvia (Latvian Human Rights Committee); the situation of the Crimean Tatars in Ukraine (Mejlis of the Crimean Tatar People); and the situation of the Ogoni people in Nigeria (Movement for the Survival of the Ogoni People).

2. The rights of persons belonging to minorities, individually or in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language, in private and in public

25. The observers for Switzerland and Finland drew the attention of the Working Group to the positive measures undertaken to protect and promote the rights of minorities to enjoy their own culture and speak their own language in private and in public. Observers for NGOs referred to minorities whose right to use their own language was less well protected.

26. The protection of the Latin linguistic minorities in Switzerland had recently increased by way of the adoption of a new constitutional article on Italian and Romanche which was passed by 76 per cent of the voters. The observer for Switzerland, in a detailed statement, explained that Romanche thus became an official language of the Confederation. Anybody could use the language of his or her choice, in public as well as in private, in any region of Switzerland.

27. With reference to the Sami and Roma minorities in Finland, the observer for Finland mentioned that both minorities had the right to their own languages and cultures. In addition, the Sami were guaranteed the right to cultural autonomy in respect of their language within the Sami homeland, and were entitled to use the Sami language before the authorities, including courts of law, regional or local State authorities, and municipalities in the Sami homeland. (The observer mentioned that further details were provided in a study on Finnish minority legislation submitted to the Working Group by Mr. Kristian Myntti.) As for the Sami in Norway, the observer for Norway mentioned that the Sami Act established an administrative area of the Sami language in seven municipalities, allowing the Sami to use their language in the administration and in the legal system.

28. Reference to minorities who were restricted in the use of their own language in private and in public included: the Basque linguistic minorities in France and Spain, where de facto discrimination of the Basque-speaking minorities remained (Congress of Basque Culture); the Hungarian minority in Slovakia by way of the Slovak Language Law (Democratic Alliance of Hungarians in Romania); the Afro-Colombian community from San Andrés, Colombia, where Spanish is the dominant language for all official and public affairs (Islander Civil Movement); and the Assyrian minority in Turkey who could use their language in public (Assyro-chaldéen de France).

29. Professor de Varennes stressed that some of the most direct threats to minorities came from government measures which contravened in particular the freedom of expression, including language. Freedom of expression could, for example, have a significant impact in countries such as Indonesia where the Chinese minority saw its language prohibited in certain private spheres, in Turkey where some prohibitions were still apparently in place with respect to the Kurdish minority, and in Algeria where the Berber minority language also faced a number of restrictions in the private sphere. Professor de Varennes suggested that when considering what constituted a non-discriminatory language preference by a State, a sliding-scale model offered a practical formula which took into account factors such as the number of speakers of a language, their territorial concentration, the level and type of public services being sought, and the disadvantages, burdens or benefits a State's linguistic practice imposed on individuals and on a State's human and material resources.

3. The value and content of education aimed at protecting the cultural identity of persons belonging to minorities, including the right to learn and have instruction in their mother tongue (art. 4.3)

30. Observers for Governments and non-governmental organizations mentioned the positive action taken by States to ensure that minorities could learn their mother tongue and have instruction in their mother tongue, while others referred to certain restrictions in the exercise of this right.

31. The observers for the Mohajir Quami Movement stated that one of the preconditions for minorities to enjoy the right to education in their mother tongue was a basic overall level of education of the population, particularly in the rural areas of third world countries.

32. The observer for Poland stated that admission to minority schools was free and education in the mother tongue of minority groups was available. The observer stressed the need for efforts to acknowledge the history and language of minorities across borders.

33. With reference to the right of the Sami minority to learn and have instruction in their mother tongue, the observers for Finland and Norway mentioned that the Sami language receives special status in schools, where instruction is given both in Sami and in Finnish and Norwegian respectively. The observer for Finland added that in the Sami homeland instruction is provided in Sami if the pupil knows Sami, and Sami is taught as a foreign language outside the Sami homeland. The observer for Norway mentioned that

children with a Sami background may demand instruction in Sami if there are at least three Sami-speaking pupils in the school who demand such an education.

34. The observer for of the Romanian Institute for Human Rights provided some detailed information about the Romanian Law on Education which was adopted in 1995. Specific reference was made to the provisions which addressed the rights of national minorities to study and obtain instruction in their mother tongue, on instruction in Romanian literature, language, and geography at secondary level in the Romanian language, and the teaching of these subjects in the mother tongue of a minority at primary level. The Law further provides for the teaching of the history and traditions of the national minorities living in Romania, which can also, upon request, be taught in the minority language. At secondary level, and upon request, it was also possible to obtain instruction in the mother tongue when studying particular subjects in the artistic and cultural fields.

35. As for restrictions of the right of persons belonging to minorities to learn and have instruction in their mother tongue, reference was made to the Kurdish minority which was often denied instruction in their mother tongue in the Islamic Republic of Iran, for example, where the teaching of minority languages such as Kurdish was not authorized, and in the Syrian Arab Republic and Azerbaijan, where it was prohibited. In Turkey and Iraq, the right to education was further undermined as many schools had been destroyed, affecting Kurdish children in particular and access by the Kurdish minorities to tertiary education was often restricted (France-Libertés); in Slovakia the authorities had abolished the bilingual certificate of minority secondary schools, implying that minorities could only be educated in Slovak at secondary level (Liberal International); and in Latvia, according to the law on education currently being discussed in Parliament, the language of education is to be Latvian only and as national and ethnic minority schools were financed by the State only at the primary level, members of minorities whose mother tongue was other than Latvian had to continue their education in Latvian (Latvian Human Rights Committee).

4. The value and content of multicultural education in fostering reciprocal understanding and tolerance, and the role of educational policies in ensuring the effective participation in society of persons belonging to minorities

36. Mr. Bengoa introduced his working paper on education and minorities (E/CN.4/Sub.2/AC.5/1996/WP.3) and highlighted the following issues which he considered to be of particular importance to the Working Group.

37. There was need for integrated, rather than assimilative, educational policies, allowing members of minority groups to link up with the majority on the basis of respect and equality, thus making cultural coexistence possible in the long term with full respect for the rights of persons belonging to minorities. Integration, Mr. Bengoa stressed, was a harmonious process in which the identity of a minority was an integral part of society as a whole.

38. To that end, decisive positive action must be taken by States to protect and promote the rights of minorities, allowing them to develop characteristics which differed from those of the majority. This included, for example,

setting up schools providing education in a minority mother tongue, or the development of policies in the field of education and culture intended not only for minorities, but also for the majority and for society as a whole. Mr. Bengoa added that experience in recent decades demonstrated that cases in which a minority showed a willingness to assimilate resulted from existing cultural pressures that prevent it from developing. In his opinion, there thus exists no minority group who wishes voluntarily to assimilate and thereby lose its own characteristics, especially its own culture.

39. Mr. Bengoa stated that educational segregation was the result of a misunderstanding of the idea of minority protection. He noted that the UNESCO Convention against Discrimination in Education referred almost exclusively to minorities but not specifically to their cultures, and added that bilingual intercultural education which implied that status language and cultural heritage had equal status was of prime importance.

40. Voluntary migrants who had to adapt to the customs and school system of the host country nevertheless maintained their characteristics. Education could play a crucial role in shaping their new identity and redefining links with the society from which the voluntary migrants had migrated. Such minorities should therefore be entitled to education both in their culture of origin and that of their host culture.

41. Mr. Bengoa highlighted the importance of the media in the development and preservation of culture and noted its negative role in promoting xenophobic, racist and discriminatory tendencies. He concluded by drawing the attention of the Working Group to the challenge of incorporating the topic of multiculturalism, cultural multiplicity and respect for the characteristics of minorities into educational policies, school curricula and the media. In this connection, the Working Group could become an important forum for ethnodiversity and the promotion of "multicultural culture".*

42. The discussion under this item centred in particular on the issue of educational assimilation versus integration and the right of minorities to choose whether to integrate or assimilate, the inclusion of knowledge about minorities in educational curricula, positive experiences in furthering multicultural education, and some additional problems faced by minorities in various countries.

43. Professor Thornberry mentioned that the prohibition of forced assimilation of persons belonging to minorities is implicit in the text of

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* With reference to this particular issue, the International Centre for Ethnic Studies presented a project on multiculturalism in Asia which sought to assess the regulation of ethnicity at the State level, including a historical analysis of the management of ethnic diversity within selected countries; the emergence and solidification of ethnicity as a significant national identity; and how local-level practices had mediated and diffused ethnic conflict as well as facilitated ethnic harmony and community accommodation. This project is supported by the Sasakawa Peace Foundation.

the Declaration, while it is explicit in, for example, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe of 1990. Integration, on the other hand, implied that minorities were treated as part of the State and society and that they had the same rights and duties as others and the same obligation to respect the laws, but that they also made a contribution to the enrichment of society as a whole.

44. Mr. Chernichenko stated that the interrelationship between assimilation and integration was a key factor in the acquisition and maintenance of cultural identity. The observers for Austria and Switzerland agreed that educational policies which favoured cultural integration as opposed to cultural assimilation allowed for the respect of the identity of a minority and should be promoted, thereby contributing not only to the social and cultural enrichment of a country but also to its stability. The observer for Austria affirmed that education which promoted integration should be available to minorities resulting from migrations enabling them to learn their mother tongue and maintain contacts with their own culture. As for the media, this was an important subject which needed to be discussed further.

45. Mr. Ali Khan supported the view that it was crucial to encourage educational policies aimed at integration rather than assimilation and added that realities which existed in different parts of the world needed to be taken into account. These included low literacy levels of the Muslim population, the largest minority in India, whose children had to earn a living at a young age, thus foregoing educational opportunities available to children in many Western countries. Mr. Ali Khan raised the issue of the recognition of a minority language, as in many countries employment was conditional on being able to speak the national language rather than a minority language. Finally, Mr. Ali Khan referred to the need for a balance between receiving an education which placed great emphasis on minority interests, such as, for example, religious education in parts of northern India, and the need to be taught subjects which were of value for later life.

46. With reference to the issue raised by Mr. Ali Khan on the recognition of a minority language, Mr. Chernichenko was of the view that the number of a given minority should determine whether higher education in that language should be provided and whether it should be declared a national language. He agreed with Mr. Ali Khan that granting a minority language official status would improve the economic prospects of minorities receiving an education in their mother tongue.

47. With reference to the right of choice of minorities to integrate or assimilate, Mr. Chernichenko felt that assimilation in itself was negative but that forced assimilation amounted to serious discrimination. The observer for Austria and the observer for the Ibn Khaldoun Centre for Development Studies added that the right to choose integration or assimilation should be available to all persons belonging to minorities.

48. With reference to the inclusion of knowledge about minorities into educational curricula, Mr. Khalil mentioned that it was important to stress

the need for interaction between minorities and majorities, and to increase the knowledge of the contribution of the minorities to the culture of society as a whole. He reiterated that the State had a role in ensuring that educational curricula reflected the culture of both minorities and majorities, a crucial aspect of the positive promotion of the rights of minorities. The observers for the Democratic Alliance of Hungarians in Romania and the Ibn Khaldoun Centre for Development Studies agreed with Mr. Khalil and mentioned that information about the culture, history and civilization of the Hungarian minority in Romania and the Coptic minority in Egypt still needed to be reflected in national educational curricula.

49. The observer for the Assyrian Universal Alliance provided information about positive measures which Australia had taken to ensure multicultural education, whereas the observer for the Association des Assyro-chaldéens de France mentioned that in their countries of origin, Assyrians were deprived of their own schools, even at primary level, and were prohibited from establishing their own schools.

50. The observer for the Minority Rights Group stressed that education was a prime method of promoting the rights of minorities and intercommunity cooperation. The issue of education and minorities had been addressed in a number of the Group's reports such as on Northern Ireland and the segregation of children in Catholic or Protestant schools, on Sri Lanka where the issues of language and education had exacerbated the tensions between groups, and on the Roma who were poor, whose levels of literacy and education were low and who had little opportunity to obtain education in their mother tongue.

51. The observer for UNESCO mentioned that in the sphere of education and culture UNESCO was paying particular attention to the prevention of discrimination of persons belonging to minorities. Mention was also made of the fact that UNESCO endorsed the value and content of multicultural education in fostering understanding and encouraged educational policies which ensured the effective participation in society of persons belonging to minorities, with specific emphasis on the access of minorities to education.

52. The observer for Estonia stated that although racism, xenophobia and discrimination were valid points, it was necessary to take into account other realities such as the fear of imperialism, colonialism, and big-Power domination. These realities, which had shaped individual perceptions, must also be addressed when promoting the form of pluralism which Mr. Bengoa advocated in his paper.

53. Mr. Bengoa concluded the discussion on the role of multicultural education in fostering mutual understanding and tolerance by noting that the realities of minority situations in the world differed and suggested that a more comprehensive study should be prepared for the next session including some of the issues which had been brought up during the discussion. These covered the issue of assimilation and the right of choice of minorities to integrate or to assimilate, the question of illiteracy, and the need to incorporate the element of colonialism.

5. National recourse and conciliation machineries, including national commissions or councils, community mediation and other forms of voluntary dispute avoidance or settlement

54. The observer for the Indo-European Kashmir Forum mentioned that while national recourse and conciliation mechanisms were the real instruments for resolving problems of minorities, this was only possible when all affected groups were formally represented in the national or regional reconciliation process, requiring proper and adequate representation by the minority in the processes of negotiation and conciliation.

55. The observer for the Anti-Racism Information Service mentioned the situation of the Ingush minority in the Northern Ossetian region and suggested that that particular conflict area could be an experimental laboratory for peaceful conflict resolution. It could possibly yield a working model that could be adopted for use in similar conflict situations.

56. The observer for the International Centre for Ethnic Studies mentioned that conflicts in South Asia mirrored expressions of minorities to preserve their culture, religion and language in particular. Reference was made to the conflicts in Sri Lanka between the Sinhala and Tamil communities and between the Sindhi and Mohajirs in Pakistan, and the relations between: Bhutan and Nepal over the issue of Nepalese-speaking persons from southern Bhutan who were in refugee camps in the south-east of Nepal; India and Bangladesh in respect of the displacement of the Chittagong Hill Tracts population in Bangladesh; India and Pakistan over the issue of Kashmir. The possible options for the avoidance and settlement of conflicts included confidence- and security-building measures and the promotion of forums for discussion and dialogue. In addition: national legislatures or parliaments should be the focal points for evolving mechanisms which interact with various political parties and groups to deal with issues pertaining to minorities; more attention should be paid to electoral reforms which accommodated minority aspirations; avenues for judicial review on matters pertaining to individual and collective rights should be available; care should be taken to address issues arising out of the militarization of society.*

6. The need to pay due regard to the legitimate interests of persons belonging to minorities in national policies and programmes

57. The representative of the Indo-European Kashmir Forum drew the attention of the Working Group to the fact that the phrase "legitimate interests" of persons belonging to minorities needs to be defined. Would the participation of minorities in the context of national programmes be only of an advisory

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* On this topic, the International Centre for Ethnic Studies organized a discussion session on their project on "comparative federalism" in order to obtain feedback on the type of federal structures which could be established at national level, as a means to effectively address problems involving minorities.

nature or would it mean real participation in policies leading to decision-making and implementation? If the participation is merely advisory the real interests of minorities may never be taken into account, whereas if the participation is mandatory, then the opinion will carry legitimate weight.

58. The Latvian Human Rights Committee drew the attention of the working group to the programme elaborated and implemented by the Government of Latvia together with the United Nations Development Programme on the strengthening of Latvian language instruction. The representative stated that this programme fails to take due regard of the interests of the minorities wishing to maintain the provision of education in their own language.

C. At the bilateral and regional levels

1. The existence, use and value of bilateral treaties and similar agreements

59. The observers for the Russian Federation and Hungary provided positive examples of bilateral treaties protecting the rights of minorities, and the representative of the High Commissioner for National Minorities of the Organization for Security and Cooperation in Europe (OSCE) and Professor Thornberry discussed the use and value of such treaties.

60. The observer for the Russian Federation mentioned that bilateral treaties had been concluded with the CIS and the Baltic States with the aim of protecting and promoting the rights of the Russian minorities "abroad". The provisions of the treaties covered issues such as citizenship, social welfare, the recognition of educational diplomas and qualifications, the right to attend Russian schools and Russian higher educational establishments set up for the purpose, and the right to enjoy their own culture through the support of Russian theatres, the refurbishment of national monuments, and the provision of technical support for magazines and newspapers in Russian. The need for the establishment of a CIS committee to ensure that the signatories of the treaties complied with its provisions was stressed.

61. The observer for Hungary mentioned that the Declaration had been incorporated into domestic legislation through the ratification by the Hungarian Parliament of a bilateral treaty on good neighbourly relations between Hungary and Slovakia. In article 15 of the treaty, the contracting parties agreed to implement the provisions of the Declaration as legally binding.

62. The representative of the OSCE High Commissioner on National Minorities said that bilateral treaties which formalized friendly relations should be concluded between neighbouring States. Such treaties recognized the territorial integrity of States and allowed for the entrenchment of appropriate standards of treatment of national minorities, and further facilitated the development of economic relations of mutual interest and benefit.

63. Professor Thornberry referred to the validity of past treaties, especially those concluded under the aegis of the League of Nations, and wondered whether, in the event they were revived, they would match contemporary international standards. There had been a recent upsurge of bilateral treaties associated with the OSCE Stability Pact. The advantage of such treaties was that they focused on problems involving minorities at the local level and allowed for variations in specific circumstances. The disadvantages were that they could lower existing multilateral human rights standards, they were often negotiated in the absence of the very minority groups they were designed to protect, and could be drafted too hastily, thus leading to deficiencies in their technical content.

64. Mr. Ali Khan added that the advantages of bilateral treaties far outweighed the disadvantages. The conclusion of such treaties should therefore be encouraged as a means to improve the promotion and protection of persons belonging to minorities.

2. The existence, use of and experience with regional mechanisms for the protection of persons belonging to minorities

65. Information was submitted to the Working Group on the mechanisms in Europe for the promotion and protection of the rights of minorities, covering both standard-setting activities and activities of a more operational nature.

66. With regard to standard-setting activities, the representative of the Minorities Section of the Directorate of Human Rights of the Council of Europe referred to the European Convention on Human Rights and the legal remedies it afforded, including article 8 on the right to private life, article 9 on the freedom of religion, article 10 on freedom of expression, and article 11 on the freedom of association and assembly. Furthermore, the Additional Protocols to the European Convention contained individual rights in the cultural field.

67. It was expected that the major instrument of the Council of Europe for the protection of minorities, the Framework Convention on National Minorities, would enter into force by the end of 1996. The Convention did not, under any circumstances, legitimize claims against the territorial integrity of States (art. 21); neither did it derogate from existing standards of protection (art. 22). The operative articles covered a wide range of areas such as the promotion of the identity of a minority, protection from forced assimilation, participation in public life, the use of language, education and transfrontier contacts. The Convention would be implemented through national legislation and policy as well as through bilateral treaties, and monitored by the Committee of Ministers on the basis of periodic and ad hoc reports by the Contracting Parties.

68. The more operational activities included the plan of action against racism and intolerance, and the programme of confidence-building measures aimed at promoting cooperation between minorities and other groups in areas of actual or potential conflict. The director of the programme of confidence-building measures introduced the activities of the programme which were of a practical nature and helped to break down barriers between different communities at the grass roots. It covered measures which promoted mutual

acquaintance and peaceful coexistence between groups, facilitated intercultural learning, furthered education in human rights with a focus on tolerance and democratic citizenship, and provided opportunities for people from different communities to work together towards a common objective.

69. The representative of the OSCE High Commissioner on National Minorities drew the attention of the Working Group to the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 1990 which contained, in particular, provisions on the rights of persons belonging to national minorities, and to the activities of the OSCE High Commissioner on National Minorities, a mechanism established in 1992 as an instrument of conflict prevention through quiet diplomacy. The High Commissioner on National Minorities had been involved in a number of countries where situations involving national minorities raised, in his opinion, concerns over security. His mandate allowed him to act at the earliest moment to de-escalate tensions and to seek peaceful solutions. He had direct, unimpeded contacts with all parties and persons of interest and could engage independent experts to assist him. Although the High Commissioner's work was conducted confidentially, it was generally known that he was engaged in a situation and his recommendations, together with the official responses of the Governments in question, were eventually made public.

70. The representative of the Anti-Racism Information Service asked what links existed between the Office of the High Commissioner on National Minorities and that of the United Nations human rights bodies and organs, and whether it was possible for a minority to invite the High Commissioner to investigate a particular situation. The response was that cooperation was limited due to the confidential nature of the work of the High Commissioner but that he was kept informed about the developments at the Commission on Human Rights, the Sub-Commission, the treaty bodies, and the special rapporteurs and special representatives. The High Commissioner did not require an invitation to initiate a visit to a country, as he could himself determine whether a situation warranted his intervention.

D. At the global level

1. The role of the treaty bodies

Committee on Economic, Social and Cultural Rights

71. The Chairman of the Committee on Economic, Social and Cultural Rights provided an overview of the activities of the Committee in the promotion and protection of the rights of persons belonging to minorities. He cautioned against viewing minority rights as being of a collective nature and limited only to non-discrimination, as in the case of the right to culture and the right to education, a tendency which, he implied, had developed within the Committee. He stressed that the very ordinary rights to food, health care and work were the rights which were most often undermined as far as minorities were concerned.

72. He urged NGOs and representatives of minority groups to participate more actively in the deliberations of the Committee and to submit relevant information on country situations as and when State party reports were

considered; the first day of each session was available for that purpose. On the basis of detailed and concise information, the Committee could insist on a genuine dialogue which could lead to a clear set of conclusions calling on the respective Government to take appropriate measures to improve the situation of economic, social and cultural rights. Cultural rights had represented only a small part of the Committee's concerns and it was not yet clear what the practical meaning of the right to take part in cultural life (art. 15 of the International Covenant on Economic, Social and Cultural Rights) was.

73. Mr. Eide referred the participants to his report (E/CN.4/Sub.2/1993/34/Add.4), in which he stated that the Committee should strengthen its examination under articles 11, 12, 13 and 15 of the Covenant.

74. With reference to the lack of definition of the scope and content of the right to participate in cultural life, the observer for Switzerland recalled that almost the same right was contained in the Declaration on the rights of minorities (art. 2, para. 2) and suggested that the Committee and the Working Group cooperate with a view to arriving at a definition of the parameters of this right and elaborate recommendations aimed at its effective implementation. A similar exercise could be undertaken for other rights.

Human Rights Committee

75. As of November 1995 the Optional Protocol to the International Covenant on Civil and Political Rights providing for individual communications to be brought before the Committee concerning violations perpetrated by a State party of any of the articles of the Covenant, had been ratified by 87 States. Of particular relevance was article 27 of the Covenant on the rights of minorities. Non-governmental organizations could represent individuals whose rights had been violated before the Committee.

76. The cases concerning article 27 which had been brought before the Committee were summarized by a member of the Centre for Human Rights. These included: Sandra Lovelace v. Canada; Bernard Ominayak and members of the Lubicon Lake Band v. Canada; Kitok v. Sweden; the Breton language cases; Singer, McIntyre, Davidson and Ballantyne v. Canada; Sara and Ländsmann and others v. Finland; and the Maori v. New Zealand case.

77. He noted that some elements of jurisprudence of the Committee had been included in General Comment No. 23 on article 27.

78. The observer for Finland drew the attention of the members of the Working Group to a case brought by the Samis against Finland which had first been declared admissible by the Committee but when the Government of Finland mentioned that the authors should have invoked article 27 of the Covenant directly before the courts, the Committee retracted its decision. It was, however, due to the decision of the Committee that the Samis now had locus standi before the normal courts in Finland.

Committee on the Rights of the Child

79. The Secretary of the Committee on the Rights of the Child said that 187 States were parties to the Convention on the Rights of the Child which covered civil and political as well as economic, social and cultural rights, and provided a good illustration of the interdependency of rights. Specific reference to minorities is contained in article 30 which provided for the protection of a child belonging to an ethnic, religious or linguistic minority. The protection of children belonging to a minority was also addressed in other provisions such as the protection against discrimination (art. 2), the best interests of the child (art. 3), right to life, survival and development (art. 6), the respect for the views of the child (art. 12). Other relevant articles included article 29 on education, article 20 on alternative care and article 5 on the rights and duties of parents as provided for by local custom. Mention was made of the monitoring function of the Committee through dialogue with Governments during the consideration of States parties reports.

80. The Committee in its concluding observations made little reference to the measures adopted under article 30, as at present, the issue of the rights of children belonging to minorities was addressed during the consideration of other related rights as mentioned above.

81. Mr. Eide emphasized that the Convention on the Rights of the Child was an important instrument that could be better and more appropriately used in the protection and promotion of children belonging to minorities, in particular by paying more attention to the ways in which respect for the views of children belonging to minorities could be ensured.

82. The observer for Poland stated that it was necessary to promote the rights of the child in Parliament where decisions were made. To that end, a political party for children had been founded in Poland.

83. The observer for the Ibn Khaldoun Centre for Development Studies raised the issue of the child's right to citizenship or nationality. He referred specifically to discrimination on the basis of gender as regards a child's entitlement to this right.

84. The observer for the Minority Rights Group noted that UNICEF had initiated a study on the impact of armed conflict on children and that MRG was currently undertaking some research on the impact of conflict on children belonging to minorities, in particular the Mayan children in Guatemala, the children from the Chittagong Hill Tracts in Bangladesh, the Roma children from the former Yugoslavia and children from Ethiopia. The observer also mentioned the work undertaken with refugee children in the United Kingdom, the publication of the information collected and the training of teachers to use this material.

85. Mr. Maxim drew the attention of the Working Group to the activities of the Working Group on Contemporary Forms of Slavery and encouraged NGOs to submit information on the ways in which contemporary forms of slavery disproportionally affected children belonging to minorities.

Committee on the Elimination of Racial Discrimination

86. The Secretary of the Committee on the Elimination of Racial Discrimination (CERD) drew the attention of the Working Group to article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination which stated that "... the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin" and was thus of applicability to persons belonging to national and ethnic minorities. Under the Convention the 150 States parties, undertook to ensure effective protection against and remedies for any acts of racial discrimination (art. 6), and must undertake to adopt immediate and effective measures "with a view to combating prejudices" and to "promoting understanding, tolerance and friendship among national and racial or ethnical groups".

87. The Committee had established an early-warning mechanism to identify situations of racial discrimination which had reached alarming levels. The Committee had increased its cooperation with other bodies and organs of the United Nations and regional organizations. The Secretary concluded by stressing that NGOs had a very important role to play during the examination of States parties' reports by bringing to light information about serious situations warranting the Committee's attention.

88. Mr. Eide reaffirmed that the role of the CERD was very relevant to the deliberations of the Working Group as the protection of ethnic and national minorities was covered by the Convention. The Committee could address in great detail the issue of citizenship and its consequences for indirect discrimination on the grounds of ethnic or national origin, as mentioned in his report (E/CN.4/Sub.2/1993/34).

89. Mr. Chernichenko asked the Secretary whether an attempt had been made by the Committee to interpret the terms "ethnic" and "national" origin as contained in article 1 of the Convention, as such information would be useful for the Working Group's discussion on the definition and categorization of minorities. The Secretary said that these terms had not been formally interpreted by the Committee but that they were taken to mean, in the case of "ethnic", the origin of a person and in the case of "national", the place where the person was born.

90. Professor Hannum mentioned that the Committee had recently adopted a recommendation on self-determination and was wondering how it applied to the Working Group's discussion. The representative of the International Centre for Ethnic Studies asked to what extent the individual complaint mechanism (art. 14) and the conciliation mechanism (art. 12) had been invoked, what the degree of compliance of the two-yearly reporting system was, and what steps the Committee had taken to encourage delinquent members to comply with the requirements of the Convention.

91. The Secretary of the Committee replied that the recommendation, which had been adopted in March 1996, contained the views of the Committee on the right to self-determination of peoples; that only 22 States parties had recognized the individual complaint mechanism; that the conciliation mechanism was not currently used; and that the degree of compliance in submitting regular

reports was low. Some reports which were long overdue were therefore examined on the basis of the last report submitted together with additional information provided by NGOs.

92. The observer for Geledes took the opportunity to draw the attention of the working group to the discriminatory practices which the black population in Brazil, Colombia and Peru was facing.

2. The role of the United Nations specialized agencies

International Labour Organization (ILO)

93. The Observer for the ILO drew the attention of the Working Group to the experience of the ILO in devising and implementing measures aimed at the reduction of tensions between minorities or other disadvantaged groups and dominant or majority populations, and by promoting and implementing the ILO standards and its technical cooperation projects.

94. Of particular relevance to minorities was the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) which defined discrimination as "any exclusion or preference made on the basis of ... religion, national extraction or social origin ... which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation", which had contributed to the protection of the rights of persons belonging to minorities in several ways. In 1991, for example, an ILO Commission of Inquiry was appointed to examine complaints of discrimination against the Roma and Magyars in Romania, which led the Commission to recommend greater respect for minority languages. In South Africa, a Fact-Finding and Conciliation Commission was established further to complaints of violations of the right of association of the country's black majority (which under apartheid was assimilated to a minority) and of the right to non-discrimination as provided for by Convention No. 111. The pre-election Government followed up on numerous recommendations made by the Commission and the present Government is continuing to review the remaining legislative discrepancies.

95. As for technical cooperation projects, the ILO was working with the Government of Namibia on an affirmative action policy in line with Convention No. 111, aimed at integrating all vulnerable population groups into the national economy. The Government of Brazil with the support of the ILO's technical assistance programme was setting up a policy on the prevention of discrimination in the workplace, including discrimination on the grounds of national origin. During the course of 1996, a national tripartite seminar to examine mechanisms for the prevention of discrimination and the protection of disadvantaged groups of workers would be organized, and in the multicultural and multilingual regions of Eastern Europe, the ILO was working on a manual intended to provide guidance to Governments and to workers' and employers' organizations on the incorporation of equality considerations into personnel policy.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

96. The observer for UNESCO submitted information about the activities of his organization in the field of culture and education.

3. The role of the United Nations bodies

Office of the United Nations High Commissioner for Refugees (UNHCR)

97. As persons belonging to minorities often suffered violations of their human rights or were subject to persecution which in turn could result in their need to seek asylum, and as minority conflicts were some of the primary causes of mass refugee flows and internal displacement, the observer for UNHCR mentioned that the protection of minorities had been on the agenda of the organization for a number of years. The report of an ad hoc working group on minorities in 1992 made a number of recommendations which UNHCR had given effect to through its increased cooperation and support to human rights bodies, promotion and training activities, research, and its prevention and protection work in countries of origin and countries of asylum.

4. The role of non-governmental organizations

98. The observer for the Minority Rights Group provided some ideas about ways in which NGOs could promote and protect the rights of persons belonging to minorities, and a number of other NGOs provided an overview of their specific activities.

99. The observer for MRG referred specifically to its advocacy role in making better known the issues facing minority communities, the encouragement of different opinions and ideas for change, the sharing of international experiences within the framework of a constructive dialogue, and the implementation of international human rights standards. The observer stated that NGOs had an important role to play in fostering understanding of international standards and in reporting objectively and accurately about situations involving minorities; they could respond positively to the needs of communities. Furthermore, NGOs could play an active role through self-help groups allowing for minority communities to be represented, and in fostering intercommunity cooperation.

100. The representative of the International Centre for Ethnic Studies mentioned that the activities of ICES focused on the study and understanding of ethnic conflict and its management. In particular, ICES had published research on violence, and had analysed institutional structures such as decentralization, devolution and federalism which could act as alternative mechanisms for conflict prevention and the satisfaction of minority aspirations. In the field of standard-setting, examples were given of research workshops on the Declaration which had brought together policy makers and academics from around the world to discuss current situations and controversial issues in the Asian region.

101. Further examples were provided, inter alia by the observers for the World Association for School as an Instrument of Peace and the European Roma Rights Centre on their role in the protection and promotion of the rights of the Roma minorities, in particular, ways in which conciliation efforts could improve intercommunity relations and defuse tension and how the Roma minorities could be taught the necessary skills to enable them to combat discrimination and win equal access to Government, education, employment, health care, housing, voting rights and public services.

5. The role of national institutions

102. An example of the role and activities of a national institution in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities was provided by the representative of the Race Discrimination Commissioner of the Human Rights and Equal Opportunity Commission of Australia. The principal function of the Commission was to implement the Racial Discrimination Act of Australia.

103. Once a complaint had been lodged under the Act, the Commissioner could investigate the complaint and attempt to conciliate. Settlements had included financial compensation, the introduction of a training programme, grievance procedures or policies to prevent future discrimination. The Commission had the power to act on its own motion when it appeared that a person had contravened the Act. This power was important as many minority groups were often unaware of their rights, lacked effective representative organizations or advocates who could act on their behalf, and as victims might be reluctant to bring a complaint before an official agency. The Commission identified areas for legislative reform and made legislative recommendations, conducted public inquiries and investigated race discrimination problems of a more systemic nature, and promoted awareness of the rights of minority groups through community education, youth campaigns, the involvement of the media and among unions and employer bodies. Finally, the Commission had the function of developing, conducting and fostering research programmes which could lead to concrete recommendations such as the introduction of comprehensive legislation ensuring the right to an interpreter in the areas of health, policing and criminal justice.

III. EXAMINATION OF POSSIBLE SOLUTIONS TO PROBLEMS INVOLVING MINORITIES, INCLUDING THE PROMOTION OF MUTUAL UNDERSTANDING BETWEEN AND AMONG MINORITIES AND GOVERNMENTS

A. Examining the causes of problems affecting minorities

104. The observer for the OSCE High Commissioner on National Minorities mentioned that in his work in de-escalating tensions and seeking peaceful solutions to problems involving minorities, most of the situations had involved language rights, education and the effective participation in decision-making processes. The solutions to such problems had included scrutinizing legislation and administrative practices to discover the sources of conflict and, in accordance with international standards, offer constructive recommendations. Through this approach, the High Commissioner sought to help States to find appropriate, satisfactory and enduring solutions, in conjunction with the commitment of the OSCE States to the principles and standards which they themselves had elaborated and adopted.

105. The observer for Ukraine raised the issue of the return of some members of the deported nationalities, such as the Crimean Tatars, the Germans and others, and mentioned that the Government of Ukraine was taking measures to settle some of the practical issues concerning the return of the Crimean Tatars in particular in cooperation with the OSCE and UNHCR.

106. The observer for the Mejlis of the Crimean Tatar People suggested that the three main communities in Crimea, the Russians, Ukrainians and Crimean Tatars, could be represented in the regional parliament, thus ensuring a balance between them, respect for their national characteristics and generally guaranteeing respect for the rights of national minorities.

B. Examining issues relating to forcible displacement of populations, including threats of removal, and the return of persons who have been displaced

107. Concerning the forcible displacement of populations and threats of removal affecting in particular persons belonging to minorities, the following situations were brought to the attention of the Working Group by NGOs:

108. Some 90,000 Bhutanese refugees of Nepali origin residing in camps in eastern Nepal, most of whom wished to return to their place of habitual residence. The Government of Bhutan however, appeared determined to deny them re-entry, thereby exposing them to the risk of becoming stateless (Jesuit Refugee Service, Lutheran World Federation, Caritas Internationalis); the Ingush deported to Northern Ossetia as a result of the Ossetian-Ingush conflict (Anti-Racism Information Service); the Palestinian minorities forcefully evicted from their villages in the south of Israel due to the implementation of land planning laws (Arab Association for Human Rights); the deportation of foreigners who had settled in Estonia but who either did not qualify or had not applied for residence and work permits (Legal Information Centre for Human Rights); the internal displacement of the Kashmiri Pandit religious minority (Indo-European Kashmir Forum); and the deported nationalities from the former Soviet Union (Mejlis of the Crimean Tatar People).

109. The observer for Indo-European Kashmir Forum stressed that the removal of physical threat to life may not be a sufficient guarantee for displaced persons to return to their places of origin. It was thus the common sense and self-preservation instinct of the displaced persons that should be the major decisive factor in determining their return and rehabilitation. He added that the nature and circumstances of refoulement needed to be clear, and raised the question as to who grants members of a minority the status of internally displaced persons in the case where the Government concerned failed to do so.

110. The observer for UNHCR responded that a handbook on voluntary repatriation was available which described the criteria for the involvement of UNHCR with returning refugees. The agency had, however, no specific mandate in respect of internally displaced persons. Mr. Eide added that Mr. Deng, the Special Representative of the Secretary-General entrusted with the mandate of internally displaced persons, was currently elaborating some relevant standards in this field.

111. As for possible solutions, the observer for UNHCR mentioned that the promotion of intercommunal relations was often central to the promotion of voluntary repatriation, and UNHCR monitored, reported and intervened as

necessary if returnees were discriminated against, and provided training for judges and prosecutors on national legislation, refugee and statelessness instruments, and human rights in general.

C. Facilitating dialogue between and among minorities and Governments

112. The observer for the OSCE High Commissioner on National Minorities drew the attention of the Working Group to the fact that disputes frequently arose because of insufficient mechanisms for dialogue at the national level. In response to this problem, the High Commissioner had promoted the development of structures for dialogue and the establishment of other instruments of democratic discussion and decision-making. This allowed for the accommodation of the complexities and peculiarities of local problems which often required wide consultations with all interested and affected persons, and ensured that all persons affected were involved in the process of decision-making, at least in the form of consultative participation.

113. The observer for the Mohajir Quami Movement mentioned that it was only through meaningful dialogue between the parties involved in minority situations that a viable and lasting solution to the problems could be found. This could be facilitated through the responsible behaviour of the mass media. One of the means to achieve such a dialogue and foster mutual understanding and tolerance was to allow minorities to be represented in the policy-making bodies of the State, enabling them to benefit from socio-cultural structures, share administrative powers and voice their opinion in appropriate forums.

114. The observer for Israel referred to the case of the Palestinian minority in Israel and mentioned that it could be included in the ongoing peace process between Israel and the Palestinian communities. She suggested that information could also be provided about different cases allowing for an analysis of legislative and other mechanisms which could assist States in resolving problems involving minorities.

D. Prevention and early-warning mechanisms

115. The observer for the OSCE High Commissioner on National Minorities stated that the mandate of the High Commissioner provided for early warning of potential conflict. His close relations with the OSCE Chairman-in-Office, allowed other forms of diplomacy to be envisaged. He reported privately to the OSCE Permanent Council composed of representatives of all member States which met regularly in Vienna. This ensured that all OSCE Governments were constantly engaged in efforts to respond to situations involving minorities and to prevent the escalation of conflict.

116. The observer for the World Muslim Congress added that in situations which could deteriorate into serious conflict, expressions of concern by the international community and the human rights bodies and institutions should be conveyed to the Governments concerned with the demand for urgent remedial action and for the presence of international monitors on the scene.

E. Patterns of media presentation and role of the media in promoting mutual tolerance and understanding

117. The observers for the World Muslim Congress and the Indo-European Kashmir Forum said that the electronic media had the potential for both good and evil; persistent caricaturing and distortion of the facts could and did create prejudices which were directed in subtle ways against the minority concerned. The observer for the Indo-European Kashmir Forum added that in countries where the media was controlled by the State it was difficult for minorities to publicize issues, and countries where the media was fairly independent, information collection and dissemination could be difficult because of practical constraints. The observer for Synergies Africa referred to the negative role the media played in African countries by exacerbating tensions between minority groups. The situations of minorities in Rwanda and Burundi were offered as examples.

118. The observer for the Ibn Khaldoun Centre for Development Studies said that the media could play a positive role in influencing public opinion in support of persons belonging to minorities. Reference was made in particular to the educational efforts undertaken during a conference on minorities organized by the Minority Rights Group and a television drama depicting the positive contribution of the Copts to Egyptian society.

119. The observer for Synergies Africa drew the attention of the Working Group to a meeting of journalists from Burundi, Kenya, Rwanda, Uganda, the United Republic of Tanzania and Zaire; held in Nairobi in 1995, which adopted recommendations on the role of journalists in promoting and protecting the rights of minorities, namely: to provide a platform for minorities to voice their opinions and contribute to the debates on conciliation; to provide information on the situation of minorities in an objective and factual manner; and to provide information on cultural diversity as a means of increasing understanding and tolerance between groups. In addition, efforts should be made with a view to increasing the commitment and responsibilities of journalists, promoting media wishing to encourage cultural, ethnic and religious diversity, and protecting the lives of journalists.

IV. RECOMMENDATION OF FURTHER MEASURES, AS APPROPRIATE, FOR THE PROMOTION AND PROTECTION OF PERSONS BELONGING TO NATIONAL OR ETHNIC AND LINGUISTIC MINORITIES

Reviewing the promotion and practical realization of the Declaration

120. The observer for the Ibn Khaldoun Centre for Development Studies proposed three main elements for measuring the effective promotion of the principles contained in the Declaration, namely prevention, protection and promotion. With regard to preventive activities, he suggested that expertise should be encouraged in order to formulate ways in which early signs of ethnic tension could be detected and an early-warning system established; he suggested that norms should be elaborated to measure the promotion of the principles contained in the Declaration, and that promotional activities focus on the enhancement of greater participation of minorities in all aspects of society. He further suggested highlighting "best practices" on the effective promotion

of the Declaration which would encourage constructive problem-solving and positively reinforce the ways in which the Declaration can be applied.

121. The observer for the World Muslim Congress said that once the apparent symptoms of discrimination against minorities were identified it was possible to address its root causes which would in turn enable the monitoring and prevention of the non-respect of the rights of minorities and allow for corrective action to be taken.

122. Professor Chaszar suggested that some incentive should be offered to Governments and minorities for compliance with the principles contained in the Declaration, in the form of a reward, for example, which could be offered to States having, during a given period, shown the greatest progress towards compliance.

123. With reference to monitoring different situations in various countries in the Balkan region, the observer for the former Yugoslav Republic of Macedonia suggested that the United Nations, the Council of Europe and the OSCE should develop a more detailed and appropriate approach. Her country had initiated a comparative study on the situation of national minorities in the Balkans which was supported by the Special Rapporteur on the former Yugoslavia and the OSCE High Commissioner for National Minorities. This would be a useful starting point for a dialogue enabling Balkan countries to cooperate on the issues of common concern. The Working Group was the forum where such an initiative could be further discussed. She welcomed closer cooperation with the Council of Europe and the OSCE.

124. The observer for Hungary suggested that in order for the aspirations and needs of minorities to be satisfied, it was necessary to involve minorities at all levels of the conceptualization, formulation and implementation of standards and recommendations on the promotion and protection of their rights. Particular mention was made of the possible role of international organizations in monitoring situations and the promotion of dialogue in order to reach solutions at the national level.

Additional measures

125. The observer for the ILO drew the attention of the Working Group to the recently published report of the ILO Committee of Experts which provided some useful information in respect of Convention No. 111. Countries which had not ratified the Convention were asked to submit four-yearly reports on the difficulties of ratification, measures envisaged to overcome them and the prospects of ratification in the near future. In addition, the representative referred to the information contained in the report on country cases which demonstrated that technical assistance was a good way of promoting the rights of minorities.

126. Mr. Magee stressed the fact that the principle of the territorial integrity of the State was strong in international law and that there were many options available for the accommodation of minority groups within the internal structure of the State. Some concepts of autonomy not only allowed minorities to be valued and respected but also facilitatd the effective implementation of minority rights in the fields of education, language, the

media and culture. The United Nations should take the lead in emphasizing non-threatening options which, far from instigating the break-up of States, actually preserved their territorial integrity.

127. Professor Chaszar suggested that an international day of minorities could be proclaimed on 18 December as had been done nationally by Hungary; this would increase awareness of minority issues and publicize the existence of the Declaration. Some thought should be given to transforming the Declaration into a legally binding instrument.

128. The observer for Friends of Kashmir mentioned that in most democracies, especially in developing countries, it became necessary to provide both legislative and administrative protection to minorities; in particular, a mechanism needed to be established which would ensure the representation of the minority in the legislative, executive and judicial organs of the State.

129. The observer for the Minority Rights Group stressed the need for obtaining data on the issue of literacy and minorities and mentioned that MRG was preparing a new World Directory on Minorities. There was also a need to examine the experimental and positive measures which had been undertaken in the field of multicultural education, which highlighted the positive elements of the culture, identity and history of minorities.

130. The observer for the Youth Resource Centre on Human Rights stressed that there was a great need to increase the awareness of minority rights at the grass-roots level, train youth from minorities about the rights they are entitled to, and integrate them into human rights activities and mainstream policies. This would equip them to better promote and protect the rights of the minority which they represented, thereby providing a clear link between the rights of minorities and their implementation.

V. QUESTIONS OF DEFINITIONS, ATTRIBUTES AND CATEGORIZATIONS OF MINORITIES

Definition

131. Mr. Chernichenko presented his paper (E/CN.4/Sub.2/AC.5/1996/WP.1) on the definition of minorities and highlighted a number of issues which he deemed particularly important. Mr. Chernichenko stated that his working paper contained merely a working hypothesis which he did not expect the Working Group to adopt but which should act as a guideline to be further elaborated and refined. His definition reflected a combination of those provided by Mr. Deschênes, Mr. Capotorti and Mr. Eide, but he felt it necessary to add at article 4 of his working paper that minorities could also include non-citizens who permanently resided in a given State.

132. Mr. Chernichenko noted that in the light of the understanding reached by the Working Group entrusted with the elaboration of the Declaration, the right of peoples to self-determination did not extend to minorities. However, there might be cases when, due to various circumstances, a national minority became a "people", thus raising the question of whether the principle of

self-determination applied. As it was difficult to determine how and when a minority became a people, his definition of minority neither included peoples nor those who had the right to self-determination.

133. It was beyond the scope of the definition to cover the situation of a national community which was a numerical minority among the population of a given State and had characteristics of a minority but which did not want to be considered as such.

134. The observers for Nigeria and the Republic of Korea and Professor Hannum agreed with Mr. Chernichenko that it was necessary to identify common elements of a definition which could serve as a basis for the work of the Working Group. The observer for Nigeria added that it was a principle of the General Assembly that any international instrument must have a clearly delimited set of rights and obligations and define the subject and beneficiaries of those rights. Professor Hannum referred to the fact that a minority should be numerically smaller, should be permanently resident and should have objective characteristics.

135. The observers for Austria and Switzerland stated that it would not be in the interest of the Working Group to dwell extensively on the futile exercise of seeking to arrive at a definition of minorities, and the representative of the ILO felt that a more precise definition was not a necessity for the Working Group. Professor Thornberry added that a definition of minorities in international law had often done little more than impede the process of standard-setting and had not been included in the Declaration; law in fact had proceeded without sharp definitions in order to preserve flexibility, openness and the possibility of progress. He stressed that it was important to question the purpose of a definition and to pose the political, practical and moral question as to who defined, who described and who classified. The observer for Austria added that even if a definition could be arrived at, who then belonged to that defined minority and who was going to exercise the rights reserved for minorities?

136. Mr. Khalil said that the lack of a clear definition of minorities should not constitute an obstacle to the work of the Working Group. An exchange of views on the issue could be encouraged to facilitate the Working Group's task as suggested by Mr. Chernichenko. It was important to take into account both the subjective and the objective elements of what constituted a minority, including the fact that a minority should consider itself a minority. The representative of the Ibn Khaldoun Centre added that the numerical, sociological, psychological and political dimensions of a definition could be considered.

137. Mr. Bengoa wondered about the practical usefulness of a definition. Would a more precise definition facilitate the better realization of the rights of minorities and would it help to clarify relations between States and groups? All definitions were ad hoc as they had to take into account the present situation in a given moment in history. If minorities argued that a definition would allow for a better realization of these rights, then this issue should be included in the work of the next session.

138. Mr. Ali Kan stated that there was no principle of international law which barred the question of the definition of minorities. It was important to continue the discussion on a workable and functional definition as that will allow the Working Group to better understand what was meant by the term minority. Reference could be made to various definitions as common factors to guide the work on a definition.

139. As an alternative to a precise definition, the observer for the ILO suggested that an expression of coverage as contained in article 1 of the Indigenous and Tribal Peoples Convention (No. 169) might be sufficient. In that respect, reference was also made to the "self-identification as indigenous or tribal" element referred to in article 2 of the Convention. Professor Thornberry proposed that a similar approach could be applied to minorities (further details are contained in the document prepared by Professor Thornberry listed in annex II).

140. The observer for Switzerland mentioned that there already existed sufficient elements which allowed for the recognition of a minority in so far as an "expression of coverage" was concerned. The observer agreed with Mr. Chernichenko on the need to elaborate guidelines on the notion of minorities.

141. The observers for Austria and Finland said that a definition of minorities had already been elaborated by the Central European Initiative for the Protection of Minority Rights and included in resolution 1201 of the European Parliament.

142. Mr. Ali Khan stated that some definitions were available at the national level such as that on minority educational institutions in India.

143. Professor Thornberry said that the Human Rights Committee's General Comment on article 27 of the International Covenant on Civil and Political Rights stated that the rights were not limited to citizens, and a similar claim could be made about the Declaration. Therefore, withholding citizenship and thus also the granting of certain rights could undermine even the rights recognized in article 27 of the Covenant.

144. The observers for the Legal Information Centre for Human Rights referred to article 1 of Mr. Chernichenko's paper and the danger of including in a definition of minority only those persons who were permanently resident in the territory of a State. This could, for example, have negative consequences for minorities in countries such as Estonia where only citizens had the status of permanent residents, thereby excluding the majority of persons belonging to minorities.

145. The observer for the Republic of Korea stressed that nationality and citizenship were insufficient conditions to determine minority status and that the definition of minorities should thus encompass permanent residents as well. Reference was made to the 600,000 Koreans residing permanently in Japan who should be considered as minorities regardless of citizenship.

146. The observer for the ILO noted that article 2 of Mr. Chernichenko's paper appeared largely to replicate article 1 and required clarification. If

article 4 was intended to extend minority rights to citizens, then what of migrant workers who met the criteria but had not become naturalized?

147. The observer for Finland felt that there might be some overlap between the protection afforded to minorities and that given to indigenous people, and therefore there should be some reference to indigenous people at article 5 of Mr. Chernichenko's paper. The observer for the ILO agreed that the exclusion of indigenous people from the definition at article 5 was unjustifiable.

148. The observers for Finland and the Ibn Khaldoun Centre for Development Studies and Professor Hannum stressed the need to refer at articles 2 and 3 of Mr. Chernichenko's paper to the will of minorities to be considered a minority.

149. The observer for the Republic of Korea stated that the will to preserve the existence and identity of a group as contained in articles 1 and 5 of Mr. Chernichenko's working paper should be deleted as they were a possible source of abuse.

150. The observers for Cuba and Mexico stated that the definition should remain flexible so as to take into account the realities of today's world and to encompass vulnerable groups such as migrant workers. The observer for the Mohajir Quami Movement added that the Mohajirs in Pakistan, who had a distinct language and culture, constituted an ethno-linguistic minority as defined by Mr. Deschênes, Mr. Capotorti and Mr. Eide, and should thus be included in a definition.

151. The observer for Azerbaijan found it difficult to understand the reference in paragraph 10 of Mr. Chernichenko's working paper to the transition of a minority to a people, implying that a minority, under certain circumstances, could become a people with the right to self-determination. This might be used as a pretext for granting self-determination to minorities such as the Armenians in Nagorny-Karabakh.

152. The observer for Nigeria felt that the reference in Mr. Chernichenko's paper to the non-dominant position of minorities was not applicable to many African countries where the ethnic minority could be in a dominant position as was the case of Rwanda and Burundi. Furthermore, if reference is made to the numerical notion of less than half the population, as in articles 1 and 2, then Africa was a continent of minorities.

153. In conclusion Mr. Chernichenko said that he disagreed with the observer for the ILO on the need to include indigenous people in the definition. As to the comment made by the observer for Finland, Mr. Chernichenko reiterated that during the elaboration of the Declaration by the Working Group, it was agreed that it did not apply to indigenous people. He could not fully agree with the observer for Mexico as migrant workers did not constitute a typical minority and therefore should not be included in the definition. As for the issue of permanent residency, he did not intend to make this criterion an absolute and therefore suggested adding the words "in principle" to the references to permanent residency and indigenous people. Mr. Chernichenko disagreed with the comment made by the observer for Azerbaijan, as national minorities could in certain cases, especially if they were living compactly on a territory, be

a minority today and become a people tomorrow. The question remained as to how this could be realized and, in that respect, Mr. Chernichenko agreed that some clarifications to the working paper were needed; he would prepare a new version for the next session reflecting the comments and suggestions made.

154. Mr. Eide concluded that the discussion on the definition would be carried forward to next year. He cautioned, however, against confusing a number of issues such as the question of aliens and citizens which was different from that of minorities and non-minorities. He reiterated that article 2 of the International Covenant on Civil and Political Rights stated that each State party "... undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction ..." the rights contained therein, and that article 27 on the rights of minorities was applicable to citizens as well as aliens.

Classification and categorization of minorities

155. Mr. Eide introduced his working paper (E/CN.4/Sub.2/AC.5/1996/WP.2) by mentioning that institutions such as the United Nations, the Council of Europe, and the OSCE had for many years tried unsuccessfully to arrive at a definition of minorities. Should a definition be adopted, however, it would inevitably exclude certain groups which fell outside the established parameters and include those who are already well protected. Examples were given of aliens or non-permanent residents in need of protection on the one hand and indigenous peoples who were already protected by other instruments, on the other. Therefore, rather than define a minority, it might be more appropriate to adopt constructive approaches based on the differences in the needs of minorities and the situations they were facing.

156. Mr. Eide stressed that it was necessary to recognize the distinctions, based on reasonable criteria, between different categories of minorities, notwithstanding the fact that groups already enjoyed a number of rights associated with minority rights such as those covered in article 27 of the International Covenant on Civil and Political Rights, and in articles 18 and 19 of the Universal Declaration of Human Rights on the freedom of religion and the freedom of expression respectively. The working paper provided an overview of the positive measures to be adopted by States in creating conditions enabling minorities to preserve and develop their identity on the basis of distinctions such as the origin of their situation, the length of stay in a particular country, and the reasonableness of a minority preserving and protecting its own culture, especially for those groups who live compactly together in a region of a territory. The illustrations provided in the paper reflected the notion of a ladder of rights depending upon the situations in which a minority found itself.

157. As for the distinction between minorities and indigenous people, Mr. Eide stressed that it was clear that the rights of indigenous people were stronger but that those rights only applied to indigenous people who lived compactly in a certain region of a territory and could exercise control over their resources. Once they migrated to urban centres, for example, they could become a minority whose prime concern was to preserve its identity within the urban setting.

158. The observer for Switzerland mentioned that the classification and categorization of minorities avoided the trap posed by the search for a universally acceptable definition and allowed for a flexible and evolutive approach applicable to different minorities in different situations. He stressed, however, that this approach allowed States to decide which rights should be granted to which minorities, thereby increasing the risk of lowering the standards already contained in the Declaration.

159. The observer for Austria highlighted the fact that the contents of article 27 of the Covenant was derived from the social realities of ethnicity, language and religion. The fact that the beneficiaries of those rights belonged to minorities was relevant merely to the exercise of the rights. He therefore felt that it would be more useful to concentrate on a ladder of the exercise of rights, rather than a ladder of rights themselves. The observer referred to paragraph 44 of Mr. Eide's report concerning the notion of the State as a common home; this, he felt, should be the focus of the interrelationship between minorities and the majority within a given State.

160. Professor Hannum agreed with the need to take into account the concrete circumstances of minorities and majorities but considered it dangerous to cast this in terms of different rights for different minorities. It would be more appropriate to consider different forms of implementation or different forms of the exercise of rights for all minorities. Rather than have a ladder of rights, one could conceive of a ladder of the means of implementation enabling the minorities and the majority to identify what was necessary under the particular circumstances to ensure respect for their identity and to secure their effective participation. It was thus not the rights which would vary according to the situation of minorities but the exercise of the rights. Professor Thornberry agreed that rather than conceive of a ladder of rights, differentiated solutions to different minority situations would be more appropriate.

161. The observer for Finland said that it was not clear as to who would decide which rights were to be covered. He also noted the risk of granting too-extensive rights to minorities which could lead to discrimination, as Mr. Bengoa had observed in his working paper.

162. The observer for the Ibn Khaldoun Centre for Development Studies stated that the purpose of classifying minorities was to detect whether the minority in question was seeking assimilation, segregation, pluralism or secession and whether the method the minority was using was peaceful, militant, violent or a mixture.

163. As for the reference to paragraph 19 of Mr. Eide's paper, Professor Hannum considered it highly controversial to state that autonomy gave rise to security problems. That observation would come as a surprise to the Governments of Spain, Finland, Italy, Panama, Nicaragua, Denmark, China, Iraq, the Philippines, the Netherlands, India, and federal States all of which had recognized autonomy in one form or another. It was difficult to equate the right of territorial autonomy with the existence of a particular minority.

164. Mr. Khalil agreed on the need to distinguish between minorities and their status. Of particular importance was the reference to identity, namely the feeling of belonging to a larger group through common history, traditions, culture and destiny.

165. Mr. Eide suggested that it might be correct to look at different sets of State obligations rather than different sets of rights. As for paragraph 19, he meant that security problems arose when a minority was ethnically linked to the territory of a neighbouring State.

Domicile and residence

166. Mr. Ali Khan presented his working paper on domicile and residence concerning minorities and migrant groups (E/CN.4/Sub.2/AC.5/1996/WP.4). He highlighted in particular the problems of migrants who were forcibly uprooted from their countries and sought refuge in adjoining areas of another country, with specific reference to the issues of domicile, habitual and long-term residence and citizenship. In his paper, Mr. Ali Khan provided a number of conclusions on the status to be granted by the receiving State to such migrant groups.

167. Professor Thornberry stated that caution should be exercised in linking rights to domicile or long-term residence. It would be prudent to distinguish which additional rights, beyond existing rights, it was considered appropriate to grant to long-established groups since it was clear that human rights, including minority rights, did not depend upon domicile. He added that the question of domicile could facilitate the domestic implementation of rights or act as a focus for new rights.

168. Mr. Chernichenko remarked that the notion of "domicile" as described in Mr. Ali Khan's working paper was intrinsic to the Anglo-Saxon legal system. As there was no concept of domicile in the Russian legal system only the term "permanent residence" applied, thus making it difficult to carry out some of the recommendations proposed by Mr. Ali Khan. He suggested adding that if migrants had been given permanent residence in a given State, neither the individuals concerned nor their children should be deprived of that status.

169. The observer for the Indo-European Kashmir Forum drew the attention of the Working Group to the fact that even when States unilaterally excluded a particular minority from domestic recognition, international standards continued to apply. The example provided was that of the terms of reference of the Minority Commission of India which excluded the State of Jammu and Kashmir from its mandate and hence could not acknowledge the Kashmiri Pandit community.

170. The observer for France-Libertés called into question the notion of domicile and residence, in countries where minorities were deported and houses and villages destroyed.

171. The observer for Pakistan expressed his disagreement with Mr. Ali Khan's choice of the case of the disputed territory of Jammu and Kashmir as an

example in his paper. In particular, the electoral process for which the migrants from Kashmir and living in other parts of India had been enfranchised did not constitute a substitute for a plebiscite.

172. With reference to the point raised by the Indo-European Kashmir Forum, Mr. Ali Khan said that the National Minorities Commission of India excluded the State of Jammu and Kashmir from its terms of reference as representation was based only on religious minorities. He noted, however, that this was an issue which needed to be given consideration.

173. Mr. Eide agreed that Professor Thornberry had raised an important issue and reminded the Working Group that article 2 of the International Covenant on Civil and Political Rights referred to the undertaking of each State party "... to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant".

174. Mr. Ali Khan reaffirmed that the issue of citizenship and domicile is not merely applicable to the Anglo-Saxon system of jurisprudence but also to other legal systems including the Russian one. Notwithstanding the provisions of article 2 of the ICCPR, the paper focuses on the rights of minorities and migrant groups from the point of view of their residence and domicile, which is also a matter of a right, with the view to eventually obtaining citizenship. In this respect the question of domicile and residence should be viewed as a complement to the protection of minorities already afforded to them by the ICCPR.

VI. FUTURE ROLE OF THE WORKING GROUP

The Working Group as a forum for dialogue

175. The observer for Switzerland said that the Working Group should be the driving force of the activities of the United Nations in this field. More specifically, the Working Group should act as the main forum for discussion between minorities and Governments as well as between and among minorities themselves, drawing on the expertise of scholars. The observer for the Minority Rights Group, the Unrepresented Nations and Peoples Organization and the Democratic Alliance of Hungarians in Romania added that the Working Group should provide a forum for frank discussion on the treatment of minorities by Governments and on constructive ways of improving relations between the parties concerned, defusing tensions and preventing conflict.

176. The representative of the International Service for Human Rights added that it was through effective dialogue that the rights of persons belonging to minorities could be better respected, cooperation fostered and a consensus secured on the means to resolve conflicts.

Focus on thematic issues

177. The observer for Austria and Professor Hannum suggested that the Working Group should consider organizing its work on a thematic basis and focus on the implementation of the Declaration. Professor Hannum added that the theme for each year could be announced in advance and Governments and non-governmental organizations should be invited to provide relevant and specific information

before each session. The observer for Switzerland suggested that it would be particularly useful for the Working Group to define the content and the scope of, in particular, articles 2, 3 and 4 of the Declaration, and the observer for Austria referred specifically to the rights of persons belonging to minorities to practise their religion, enjoy their own culture and learn and have instruction in their mother tongue. The observers for Austria, Switzerland and UNHCR agreed that this would enable the Working Group to arrive at concrete recommendations for the implementation of those principles. The observer for Austria added that a combination of theoretical input and the evaluation of practical situations would help the work of the Working Group in this respect.

178. The observers for the Ibn Khaldoun Centre for Development Studies and the Minority Rights Group added that the Working Group could commission the formulation of standards aimed at measuring and monitoring the progress achieved within countries and regions with regard to each of the principles contained in the Declaration.

179. The observer for the Russian Federation suggested that a comparative analysis of the situation as regards the implementation of the Declaration could be provided both by Governments and non-governmental organizations. The observer also mentioned the need for closer cooperation between the Working Group and State structures which formulated policies relating to the protection of minorities and elaborated legislation in that area.

Legislation

180. The observers for the International Centre for Ethnic Studies and the Indo-European Kashmir Forum and Professor Hannum suggested that the first step in promoting the practical realization of the Declaration would be to review the constitutions and legislation of States with a view to examining the extent to which there was effective protection of the rights of minorities. To that end, the Working Group should take note of all references to specific national legislation and subsequently request States to provide accurate copies of such laws for the information of the Working Group.

Studies

181. The observers for the Minority Rights Group, France-Libertés and the International Centre for Ethnic Studies suggested that the Working Group should examine ways in which understanding of the Declaration could be further developed through interpretive studies of each article contained therein, including the right to existence, the right to identity (including culture, religion and language), the right to education, the right to participation, the right to association, cross-border contacts with other members of their group, the relationship between individual rights and those rights which could only be exercised in community with others. Such studies would enable the Working Group to adopt comments on specific articles in the Declaration, which could be contained in, for example, a manual explaining the provisions of the Declaration.

182. The observer for UNHCR suggested that specific country or regional situations which could give rise to the forcible displacement of minorities

should be examined, and the observer for the Romanian Institute for Human Rights added that issues such as the duties of minorities towards the State, their harmonious integration into society as a whole and the strengthening of democracy and the rule of law could be the object of further studies.

Role of education

183. The observer for the Minority Rights Group suggested that the Working Group should focus on ways to encourage research and analysis of the link between minorities, education in minority languages and literacy. Furthermore, through the task force of the High Commissioner, the Centre for Human Rights should explore the method of cooperating effectively with other United Nations agencies including UNESCO, UNICEF and UNDP to exchange information and experiences on multiculturalism, and formal and informal education involving NGOs and minorities.

Role of the media

184. The observer for Synergies Africa recommended that the Working Group should increase its collaboration and cooperation with journalists' organizations such as Reporters without Borders and agencies such as UNESCO in order to elaborate a training module for journalists on the promotion and protection of the rights of persons belonging to minorities.

185. The observer for the World Muslim Congress felt that prejudices created by the media warranted further study by the Working Group as it was of utmost importance that States should have a responsibility to take appropriate corrective measures without adversely affecting the right to freedom of expression, wherever the media act in a fashion detrimental to the human rights of minority communities.

Submission of information

186. The observer for Nigeria suggested that the Working Group could act as a depository for information about situations involving minorities, which could then be forwarded to States through the United Nations programme of advisory services and technical assistance.

187. The observers for the International Centre for Ethnic Studies and the Minority Rights Group proposed that Governments and NGOs should be encouraged to periodically submit reports on the situation of national or ethnic minorities within their country or region in order to monitor the progress made in the implementation of the principles contained in the Declaration.

188. The observer for the Russian Federation stressed the need to provide information about the Working Group to NGOs.

Cooperation with the High Commissioner for Human Rights

189. The observer for the Minority Rights Group stressed that the High Commissioner for Human Rights should have a prominent coordinating role and should encourage the agencies of the United Nations system to refer to the Working Group in their activities relating to minorities.

190. The observer for Switzerland added that with reference to the programme on minorities of the High Commissioner he mentioned in his opening address, it might be useful to ensure that NGOs and scholars were consulted before it was adopted. Should a voluntary fund be set up for wider participation in the Working Group, the observer wondered whether it could also help finance the programme of the High Commissioner.

Cooperation with other human rights organs and bodies of the United Nations

191. Professor Hannum suggested that the Secretariat should collect the relevant information from other bodies of the United Nations, especially the treaty bodies and the thematic special rapporteurs. More specifically, Professor Hannum and the observers for Austria, the Minority Rights Group and France-Libertés suggested that information should be submitted to the Working Group on the activities of the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights, and that the Special Rapporteurs on religious intolerance and on racism, racial discrimination and xenophobia be invited to the next session.

192. The observer for the International Centre for Ethnic Studies proposed that the agencies of the United Nations coming within the purview of article 9 of the Declaration should be requested to submit in writing to the Working Group prior to its formal session progress reports on measures taken by them to give effect to the Declaration. The Arab Association for Human Rights added that United Nations organs and bodies could incorporate the principles contained in the Declaration into their own activities and develop joint projects in the field of minority protection. The observer for the Latvian Human Rights Committee stressed the need to strengthen cooperation with agencies such as UNDP and ensure that minorities were consulted and involved in any projects that were implemented.

Participation in the Working Group

193. The observers for the Russian Federation and Switzerland said that one of the tasks of the Working Group would be to seek ways in which a greater number of scholars, representatives of NGOS and of States in particular could be encouraged to participation. The observers for France-Libertés and the International Centre for Ethnic Studies added that United Nations agencies should also be encouraged to participate in the Working Group. The observer for the Inter-Africa Group specified that the Working Group should encourage the participation of African NGOs representing minorities.

194. To this end, the observers for the Inter-Africa Group, the Indo-European Kashmir Forum, the Minority Rights Group and France-Libertés suggested the establishment of a voluntary fund to enable wider participation in the proceedings of the Working Group.

Agenda and extension of the mandate of the Working Group

195. The observers for France-Libertés, the Arab Association for Human Rights, the Minority Rights Group and the Democratic Alliance of Hungarians in Romania

stated that the Working Group should establish a clear agenda for its next session by focusing on the principles contained in the Declaration and any other relevant subjects.

196. The observer for Austria affirmed that the mandate of the Working Group should be extended as there were still fundamental issues of concern which needed to be discussed.

Further suggestions

197. Professor Thornberry said that information about positive examples of bilateral treaties could be provided to the Working Group as a way of achieving solutions to problems involving minorities.

198. The observer for the Ibn Khaldoun Centre for Development Studies suggested that partnership organizations of Governments, NGOs and concerned representatives of minorities be set up for the peaceful and creative solution of minority problems and to formulate and implement policies to improve the promotion of rights, and called on the international community to assist in providing support for the training of members of minority groups. The observer for the Youth Resource Centre on Human Rights suggested that the Working Group should involve youth from minorities in educational policies and programmes.

199. The observers for UNHCR, the Ibn Khaldoun Centre for Development Studies and the Youth Resource Centre on Human Rights recommended that the Working Group consider focusing on activities relating to the prevention of ethnic conflict and the promotion of tolerance and understanding through training.

200. The observer for the International Centre for Ethnic Studies suggested that it might be useful to lobby Governments and agencies to provide more funds for the work of the Working Group.

VII. OTHER MATTERS

201. The observer for the Sikh Human Rights Group suggested that the Working Group should place greater emphasis on the relationship between minorities and economics, particularly the impact of transnational corporations on minority rights, and the observer for the Arab Association for Human Rights expressed the wish that the Working Group would address the issue of land and property rights as they related to minorities.

202. The observer for China raised a procedural issue with regard to the timing of the Working Group, as provided for in paragraph 10 of Commission on Human Rights resolution 1995/24, drawing attention to the fact that two sessions had been held between the forty-seventh and forty-eighth sessions of the Sub-Commission.

203. In response, the Chairman clarified that in order to fulfil its three-year mandate, the members of the Working Group had decided to hold the second session in April/May 1996, thus meeting the requirements that the

Working Group be inter-sessional and that the Sub-Commission make available to the Commission its annual report, in accordance with paragraphs 9 and 10 of resolution 1995/24.

204. The details of the agenda and the dates of the third session of the Working Group would be discussed by members of the Working Group during the forty-eighth session of the Sub-Commission.

VIII. RECOMMENDATIONS OF THE WORKING GROUP

205. The Working Group decided that greater emphasis should be placed on arriving at solutions to problems involving persons belonging to minorities in order to promote their characteristics and thereby contribute to mutual tolerance, understanding and peace. To this end, the Working Group emphasized that, as stated in the preamble to the Declaration, "The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live".

206. In order better to review the promotion and practical realization of the Declaration, the Working Group decided to collect information on the constitutions and legislation of States in respect of the protection and promotion of the rights of minorities. In addition, the Working Group decided to commission the preparation of short studies on the content and scope of the core principles contained in the Declaration, including the formulation of specific and concrete recommendations for their application in different countries and regions of the world.

207. The Working Group decided to explore ways in which national, regional and international monitoring mechanisms could be established and strengthened, as a means to record the progress made in promoting and protecting the rights of persons belonging to minorities and identify the problems encountered. Reference was made to the possible identification and use of indicators and the submission of comparative information.

208. The Working Group decided to focus on particular themes such as multicultural education, the use of language, the enjoyment of culture, the role of the media, and the issue of minorities and territorial integrity, and to that end, the Working Group decided to hold seminars to discuss some of the issues in greater depth.

209. The Working Group recommended that further and more substantive information on the existence of national recourse and conciliation machineries be submitted, in particular on how such mechanisms had been established, how they functioned, and how successful they were.

210. The Working Group decided to increase its cooperation with the High Commissioner for Human Rights in the implementation of his programme on minorities, specifically to strengthen his preventive activities and enhance his responses to minority situations warranting urgent action. Furthermore, the relationship between the Working Group and the treaty bodies, the thematic

special rapporteurs and the special representatives would be developed, allowing the Working Group to act as focal point for their respective activities in the field of minority protection.

211. The Working Group recommended that collaboration and cooperation with the specialized agencies, in particular ILO and UNESCO, and with UNHCR be strengthened, and new avenues of cooperation be sought with, inter alia, the United Nations Research Institute for Social Development (UNRISD), the World Bank and the IMF.

212. The Working Group recommended that the working papers prepared for the second session should take into account additional elements in the light of the comments made. These included the issues of assimilation versus integration, the elimination of illiteracy, and other factors which contributed to furthering multicultural education (working paper on education and minorities); the issues of domicile, residence and citizenship with special emphasis on the legislation and practice in different parts of the world (working paper on domicile and residence concerning minorities and migrant groups); the analysis of State obligations and the exercise of the rights contained in the Declaration rather than of different rights for different categories of minorities (working paper on the classification and categorization of minorities); the issue of citizenship, permanent residency and other groups to be included in the definition (working paper on definition).

213. The Working Group decided that Governments should be encouraged to establish mechanisms which could facilitate dialogue and conciliation between minorities and Governments. Particular reference was made to the situations of minorities which were brought to the attention of the Working Group. Information on the activities undertaken in this field should be submitted to the Working Group.

214. The Working Group decided to encourage wider participation in the next session, in particular by Governments and NGOs from developing countries, in order to facilitate dialogue and arrive at constructive solutions to problems involving minorities. To that end, the idea of encouraging the setting up of a voluntary fund to facilitate participation would be considered.

ANNEX I

List of documents before the Working Group on Minorities at its second session

	Symbol	Title
	Working Group	
1.	E/CN.4/Sub.2/AC.5/1996/1	Provisional agenda
2.	E/CN/4/Sub.2/AC.5/1996/1/Add.1	Annotations to the provisional agenda
3.	E/CN.4/Sub.2/AC.5/1996/WP.1	Working paper on the definition of minorities, prepared by Mr. Chernichenko
4.	E/CN.4/Sub.2/AC.5/1996/WP.2	Working paper on the classification of minorities and differentiation in minority rights, prepared by Mr. Eide
5.	E/CN.4/Sub.2/AC.5/1996/WP.3	Working paper on education and minorities, prepared by Mr. Bengoa
6.	E/CN.4/Sub.2/AC.5/1996/WP.4	Working paper on domicile and residence concerning minorities and migrant groups, prepared by Mr. Ali Khan
	Commission on Human Rights	
	E/CN.4/1996/88	Rights of persons belonging to national or ethnic, religious and linguistic minorities: report of the Secretary-General to the fifty-second session of the Commission on Human Rights
	Resolution 1995/24	Rights of persons belonging to national or ethnic, religious and linguistic minorities
	A/50/514	Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: report of the Secretary-General

Sub-Commission

E/CN.4/Sub.2/1996/2	Report of the Working Group on its first session
E/CN.4/Sub.2/1993/34/Add.4	Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities: report submitted by Mr. Eide (recommendations)
E/CN.4/Sub.2/1985/31	Proposal concerning a definition of the term "minority" submitted by Mr. Jules Deschênes

General Assembly

A/50/36	Report of the United Nations High Commissioner for Human Rights

Publication

Study Series No. 5	Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities

Treaty bodies

General comment No. 23 (50) adopted by the Human Rights Committee on article 27 of the International Covenant on Civil and Political Rights

Comments on the reports of the Committee on Economic, Social and Cultural Rights relating to the status, treatment and rights of minorities

General recommendation XXI (48) adopted by the Committee on the Elimination of Racial Discrimination on the issue of self-determination

ANNEX II

List of documents and interventions submitted to the Working Group on Minorities at its second session*

1.	Introductory statement	Mr. J. Ayala Lasso, United Nations High Commissioner for Human Rights
2.	Statement	Mr. Asbjørn Eide, Chairman-Rapporteur of the Working Group
3.	Finland	Finnish Minority Legislation, study prepared by Mr. Kristian Myntti
4.	Switzerland	Protection d'une minorité linguistique menacée en Suisse: les Romanches
5.	Human Rights and Equal Opportunity Commission, Australia	The role of national institutions
6.	United Nations High Commissioner for Refugees	Activities in the field of minority protection
7.	International Labour Organization	Protection of minorities by ILO action
8.	United Nations Educational, Scientific and Cultural Organization	Teacher training and multiculturalism
9.	Council of Europe	Activities in the field of minority protection
		Description of the programme on confidence-building measures
10.	OSCE High Commissioner on National Minorities	Activities of the OSCE and its High Commissioner on National Minorities
11.	International Centre for Ethnic Studies	Ethnicity, minority concerns and the utilization of the Declaration on minorities in South Asia
		Forms of dispute avoidance and settlement in the Asian region

* These documents are available from the Secretariat upon request.

12.	Minority Rights Group	The contribution of national and international non-governmental organizations
13.	Synergies Africa	Compte-rendu d'atelier sur les médias, conflits et urgences humanitaries
14.	Professor Patrick Thornberry	Indigenous peoples and minorities: definition and description
15.	Professor Fernand de Varennes	International standards and State practices involving language and the rights of minorities
16.	Professor Joseph Yacoub	La minoritologie: les minorités et la paix dans le monde

Interventions relating to the following situations involving minorities are also available in writing: the Assyrians in Iraq and Turkey, the Bhutanese refugees in Nepal, the Crimean Tatars and other minorities in Ukraine, the Ingush in Northern Ossetia, the Mohajirs in Pakistan, the Palestinians in Israel, the Pandits in the State of Jammu and Kashmir, the Roma in Central Europe, the Russian minorities in the Commonwealth of Independent States and Baltic States, the Samis in Finland and Norway, and minorities in Georgia, Hungary, the former Yugoslav Republic of Macedonia and the Russian Federation.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-eighth session
Agenda item 18

FREEDOM OF MOVEMENT

Human rights dimensions of population transfer, including the implantation of settlers and settlements

Note by the Secretary-General

1. In its decision 1995/111, of 24 August 1995, the Sub-Commission decided to request the Special Rapporteur on the human rights dimensions of population transfer, including the implantation of settlers and settlements, Mr. Awn Al-Khasawneh, to submit his final report to the Sub-Commission at its forty-eighth session.

2. In its resolution 1993/34, the Sub-Commission invited the Commission on Human Rights to request the Secretary-General to organize a multidisciplinary expert seminar prior to the preparation of the final report, in order to formulate appropriate final conclusions and recommendations. The Commission on Human Rights in its decision 1994/102, endorsed that invitation to request the Secretary-General to organize such a seminar.

3. The Secretary-General has not been in a position to give effect to the request made by the Sub-Commission in its resolution 1993/34, for reasons beyond the control of the Secretariat, including the severe financial constraints of the Organization.

4. By letter dated 26 July 1996, the Special Rapporteur informed the Assistant Secretary-General for Human Rights that, because the seminar had not taken place, he was not in a position to submit his final report as requested by the Sub-Commission. He indicated, however, that he would be willing to submit his final report to the Sub-Commission at its forty-ninth session, provided the necessary conditions to do so existed.

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Item 20 of the provisional agenda

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO RACISM, XENOPHOBIA, MINORITIES AND MIGRANT WORKERS

Towards a comprehensive programme for the prevention of discrimination and protection of minorities, including proposals for the examination of thematic issues relating to racism, xenophobia, minorities and migrant workers: some suggestions

Working paper submitted by Mr. Asbjørn Eide

Background

1. In its decision 1995/110, the Sub-Commission, taking into account the working paper prepared by Mr. Asbjørn Eide presented at its forty-sixth session (E/CN.4/Sub.2/1994/36 and Corr.1) decided to request Mr. Eide to prepare, without financial implications, a second working paper containing further suggestions for a comprehensive programme for the prevention of discrimination and protection of minorities, including proposals for the examination of thematic issues relating to racism, xenophobia, minorities and migrant workers, to be presented at its forty-eighth session and to request Mr. Eide to take into account the discussion and the proposals made during the joint meeting between the Sub-Commission and the Committee on the Elimination of Racial Discrimination on 8 August 1995.

2. The present paper is submitted in response to that request. It is kept deliberately brief, for two reasons. It is only intended to make some suggestions here for further discussion by the members of the Sub-Commission, and it is kept brief owing to the costs of documentation, including translation.

A. The approach of this paper

3. The present paper has a limited purpose. It is not a study but only a working paper for input in the discussion, and it therefore contains no comprehensive analysis of the issues involved. A few theses will be presented, for the purpose of discussion. It is hoped that benefit will be derived from the insights of all the members of the Sub-Commission. A discussion can contribute to a broader understanding of the challenges currently being faced and the choice of appropriate responses.

4. The paper very briefly reviews the considerable achievements made by the Sub-Commission over its almost 50 years of history and examines present challenges, both those facing the international society and its various components, and the challenges to the United Nations and its organs, including the Sub-Commission itself. It then explores some elements which have to be taken into account in the formation of a strategy and ends by exploring some themes in need of further examination.

B. Past achievements of the Sub-Commission

5. The Sub-Commission has major achievements to its credit. Over its nearly 50 years of existence, it has played a central role in the drafting of international standards, mainly but not only in the field of prevention of discrimination and to a lesser extent in the protection of minorities. Some of its past contributions to standard-setting and action in the elimination of racism were listed in the first working paper, including the drafting of the Declaration and later the Convention on the Elimination of All Forms of Racial Discrimination and the preparation of the Declaration on Religious Intolerance, and its role in preparing the ground for standards with regard to the prevention of discrimination in the area of education, in political rights and on equality in the administration of justice. Pride of place should be given to the outstanding contribution made by the Sub-Commission in mobilizing action against apartheid. Another area in which the Sub-Commission can take great pride is its work concerning the prevention of discrimination against indigenous peoples. The comprehensive study prepared for the Sub-Commission by Mr. Martínez Cobo was followed by the establishment and the wide-ranging activities of the Working Group on Indigenous Populations, under the Chairmanship of Ms. Erica Daes and with the extensive participation of representatives of the indigenous peoples themselves, as well as of Governments concerned. The Working Group completed the draft declaration on that subject in 1993 and it is now before the Commission on Human Rights.

6. The Sub-Commission has also endeavoured to secure adequate protection for members of minorities, a significant contribution to which was the study by Mr. Francesco Capotorti in the 1970s. One of the follow-up activities was the drafting, by the Commission on Human Rights, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992, followed by the study submitted to the Sub-Commission by the present writer on ways and means to facilitate peaceful and constructive solutions to situations involving minorities. This led to the establishment of the Working Group on Minorities, which is now in the middle of its first mandate.

7. The Sub-Commission has taken numerous initiatives which have spurred the Commission on Human Rights to develop more effective mechanisms for the promotion and protection of human rights. It will undoubtedly continue to be an essential element within the human rights machinery of the United Nations, but it is essential to reflect on the nature of the challenges being faced in order to develop the most appropriate responses.

C. Present challenges confronting international society and the United Nations

8. In the working paper presented in 1994, some of the new challenges being faced were identified and it was noted that the situation which had arisen during the previous three or four years had been a harbinger of new and serious dangers. Aggravated, new forms of discrimination had emerged, going far beyond discrimination in jobs and housing. Massive "ethnic cleansing" and massacres, bordering on genocide, and huge flows of refugees and internally displaced persons could be observed. Some approaches and attitudes had been demonstrated which constituted a head-on challenge to the very foundation of human rights, a challenge to the principle of equality and non-discrimination irrespective of colour, race and ethnic or national background.

9. Two related phenomena observed in many parts of the world were also commented on in that working paper: the language, ideology and actions of xenophobia, and the language, symbols and in particular actions of extreme nationalism. Both have an element in common: the dogmatic assertion of the desirability of ethnically or culturally homogeneous societies, leading to a rejection of those who are different or deprivation of their possibility to assert their own identity as members of the group concerned.

10. One positive sign is that past policies of more or less enforced assimilation are decreasing. This reduces the denial of the group identity of national or ethnic, cultural, religious and linguistic minorities. Unfortunately, however, there is a counter-trend which is particularly scaring: ethnic "cleansing", through massacres and unspeakable crimes, carried out by groups which are pitted against other groups.

11. It was also noted that in many places xenophobia is manifested against migrant workers and other aliens. While the main authors of violence against migrants are marginal elements in society, unemployed, young, frustrated and angry, it can be observed that their activities have caused responsible Governments also to become much more restrictive towards aliens and migrant workers, making increasingly difficult access for them to the countries where the job market is, and stepping up policies of expulsion and denials of residence permits.

12. While some of the brutality at present observed might be seen as blind and irrational violence between members of groups, it was noted that in many cases these are initiated or exploited by what can be called conflict entrepreneurs, persons who have their own political agenda and who in their own quest for power make use of the feelings of demographic stress and personal insecurity among the public at large. If this observation is correct, it was argued, it is incumbent on the international community to help and assist responsible Governments, as well as responsible representatives of

the various groups concerned, to find peaceful and constructive solutions to their concerns without physical violence and without violating international or national law.

13. On subsequent reflection, the writer has come to believe that the present malaise reflects much deeper trends in the evolution of the international system. It is not possible to discuss this in any greater detail here, but the following observations can be made.

14. It is commonly recognized that the world is going through some significant changes compared to the situation which existed at the time when the Universal Declaration was adopted, and even at the time when the two Covenants were adopted in 1966. These changes are driven mainly by the evolution of economic and technological relations, and they profoundly influence the roles and functions of the State as an organization. This process plays itself out differently in different parts of the world. It has been alleged that there is a shift from the territorial State to the "virtual State"; that it will be much more important to control capital and technology than to control territory, and that the differentiation between different parts of the world will be based on where the headquarters are of major multinational companies as compared to the places where production is carried out. Linked to this is the question of where the leading educational institutions are and where the technological innovations take place.

15. Attention should be given to two apparently contradictory processes: on the one hand a process of globalization, and on the other hand a resurgence of nationalism and of ethnic or religious identities, including phenomena often referred to as fundamentalism. It is submitted that these assertions of identity constitute some kind of a defence against the negative effects, whether real or imagined, of the processes of globalization. To some extent, these defence mechanisms are not only understandable, but possibly even necessary in order to try to create a more egalitarian world in conformity with the vision contained in the Charter of the United Nations. The search for national sovereignty can have the positive implication of defending the inhabitants of a country against destabilizing influences from the outside. It can be a necessary mechanism in order to maintain or create a domestic social order based on social justice and non-discrimination between the different groups. However, it can also have severe negative effects in terms of discrimination and exclusion. The problem of intolerance, particularly on religious grounds, is the reverse side of efforts to re-emphasize morality based on traditional religion.

16. The characteristics of globalization are, inter alia, an increasingly free flow of capital and investments across borders, combined with an unprecedented freedom to repatriate profit to the countries of origin of the investment; a relatively free flow also of technology, with its consequences in terms of changes in patterns of production and with substantial impact on social organization; and in addition an increasingly free flow of information and communication, with its positive and negative consequences, which might require further elaboration. There is no comparable free flow of labour to those countries where profit is repatriated and where, therefore, a significant part of the investments take place.

17. It is important to recognize that these processes are not egalitarian. The dynamics originate in certain parts of the world, and other parts of the world are facing the consequences of these dynamics which have not been chosen by them. To a large extent the push for globalization comes from the north-western part of the world, though countries and societies in East and South-East Asia have in recent times generated and expanded their own push for globalization and have become central actors in the process.

18. The emergence of something which is romantically called the "global village" is said to be taking place. If indeed there is a development in the direction of some kind of integration of the world, it also has to be recognized that within that village there are tremendous differences, almost approximating a cast-structured society at a global level. While some parts of the world population live in abundance, more than one billion human beings still live in abject poverty. There are some who hold power and influence, while others are the targets of the use of that power and influence. In the face of the increasing globalization, there is a resurgence of a quest for identity intended in part to serve as defence and in part to restore or obtain a relative power position within the international system.

19. The writer submits that these processes contribute to tensions and instability which can be observed in all parts of the world, also within the traditionally leading industrialized countries. They have contributed to the substantial levels of structural unemployment in Western European countries and to a severe decrease in levels of income for many workers in the United States. This, in turn, has intensified both antagonism towards migrant workers and other aliens, and the re-emergence of racial attitudes, including increasing challenges to affirmative action programmes.

20. A number of the issues to be examined in this paper are linked to the processes described above, others are not. Racial discrimination is still an important factor in contemporary life. Its main manifestation remains discrimination based on colour, manifesting itself principally in the interaction between the "white" and "non-white" population groups. It is linked to, but should be separated from, certain phenomena of group conflicts, including the severe ethnic conflicts in Rwanda, Burundi and in some other parts of Africa. The need to prevent future conflicts of this kind is essential, but adequate measures have not yet been found by the United Nations.

21. There is also a thin line between racial discrimination and xenophobia directed against certain categories of migrant workers in several parts of the world. Another severe and persistent form of discrimination in some parts of the world is that of anti-Semitism, a strange mix of residual, traditional Christian religious intolerance, cultural rejection and confused racial stereotyping. Semitic and hamitic peoples other than Jews, including Arabs, are also targeted for discrimination in some European countries and are therefore specifically covered by the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Maurice Glèlè-Ahanhanzo.

D. Requirements for the development of a broader strategy

22. In order to reflect on the activities which can be pursued, it is necessary to start with a re-examination of the mandate of the Sub-Commission, which is: (a) to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities; (b) to perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights.

23. The Sub-Commission can take independent initiatives, under part (a) of its mandate, to study any matter relating to prevention of discrimination of any kind, and to the protection of minorities. Discrimination "of any kind" clearly includes discrimination not only on the grounds of race and ethnicity, but also discrimination against migrant workers. The Sub-Commission should recognize the relationship between its two tasks of prevention of discrimination and protection of minorities.

24. The Sub-Commission has defined prevention of discrimination as the prevention of any action which denies to individuals or groups of people equality of treatment which they may wish. 1/ It has defined the protection of minorities as "the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population".

25. Prevention of discrimination is essential, but not always sufficient. It must include a concern with equality in fact, including equality for the members of the different groups in society in maintaining their own culture, religion and identity. To achieve such equality, however, the minorities must not be given privileges which create new inequality. The balancing acts between these two concerns can indeed be very difficult.

26. The Sub-Commission has certain comparative advantages in addressing these matters: first, it is not a political, but an expert body and can therefore examine the issues without being bound by the same restrictions as those who constantly have to take competing national interests into account. Second, unlike the treaty bodies which are also composed of experts, the Sub-Commission is not limited in its role to the implementation of standards defined in a particular treaty in relation only to the States parties to that treaty, but can pursue overall analysis and propose new approaches and initiatives. It can even suggest the elaboration of new or more precise standards. Third, the Sub-Commission is in the fortunate position of enjoying the presence and active participation at its sessions of a large number of non-governmental organizations from many parts of the world, in many ways the

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1/ For details of the history of the Sub-Commission, see Eide, Asbjørn: "The Sub-Commission on Prevention of Discrimination and Protection of Minorities" in Alston (ed). The United Nations and Human Rights, Clarendon Press, Oxford, 1992.

embodiment of a transnational civil society in formation. With their respective insights and suggestions they can, and to a large extent do, enrich debates of the Sub-Commission and can bring it closer to a realistic understanding of the actual processes taking place.

27. The Sub-Commission needs to seek better coordination with other United Nations bodies and also regional agencies. It is essential to reflect on the best ways in which the Sub-Commission can serve the needs of the High Commissioner on Human Rights through its analysis and recommendations. It is also essential to be aware of and draw lessons from the work of the specialized agencies and other bodies, such as ILO, UNESCO and UNHCR. It would be desirable to discuss ways in which such cooperation could be strengthened within the field of prevention of discrimination and protection of minorities.

28. Of special importance is the contact with the Committee on the Elimination of Racial Discrimination (CERD), and it is therefore gratifying that two joint meetings have been held (in 1992 and 1995) and that both sides have expressed an interest in future contact and cooperation.

29. The role of CERD is more and more demanding: monitoring the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, pursuing dialogue with States, taking urgent action, and seeking to develop a climate of confidence and cooperation in which States are willing to accept criticism and take the necessary corrective measures. The development of early warning and urgent action mechanisms by CERD from 1993 is much to be welcomed.

30. The members of CERD have by now substantial competence concerning legislation and judicial practice in the field of prevention of racial discrimination. It would be desirable for this to be made use of as part of the advisory services of the Centre for Human Rights. States should be encouraged to ensure that their national legislation fulfils all the aims and goals contained in the Convention and to train their officials to comply with those norms. It would also be desirable for them to develop a comprehensive programme of human rights education already from the earliest years of school, and for this purpose to make use of the advisory services of the United Nations. The members of CERD and the Sub-Commission might be called upon, in the light of their expertise, to assist in these educational efforts, together with the Centre for Human Rights.

31. It is desirable that the work of CERD should become more widely known and that there should emerge an awareness that the problem of discrimination exists in all parts of the world. It has been suggested, and the Sub-Commission should endorse the suggestion that regional seminars should be organized in all five regions of the world to focus on forms of racism and xenophobia in the region in which each seminar was held. These regional seminars could be organized under the auspices of CERD, but the members of the Sub-Commission from the region in question could also possibly play a role.

32. The Sub-Commission can benefit substantially from the work of CERD. As an example, it has been suggested that in discussing the possible adoption of resolutions concerning a country, the Sub-Commission should study the reports presented to CERD by that country and the commentaries thereon by the Committee.

33. The two bodies should continue their dialogue on the role they can play jointly and separately during the Third Decade to Combat Racism and Racial Discrimination and in the preparatory work for the proposed world conference against racism, racial and ethnic discrimination, xenophobia and other forms of intolerance. As a minimum, they should both present a report focusing on their respective activities in the prevention of discrimination. The report should preferably also make proposals for further action.

34. It is also essential for the Sub-Commission to maintain contact with the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Maurice Glèlè-Ahanhanzo. Through his work the Sub-Commission can become better informed of the current manifestations of racism and racial discrimination in various parts of the world. Close attention should be paid to the proposals contained in his reports.

E. Conclusion: Ambiguities and thematic issues worth attention

35. In the field of standards, the International Convention on the Elimination of All Forms of Racial Discrimination covers the existing needs well. It is to be hoped that those States which have not ratified the Convention will do so in the near future.

36. There are some ambiguities, however, which could bear further clarification. In addition, there are some national practices which should be explored in the light of the requirements contained in the Convention. Among these are the following.

37. The issue of affirmative action in favour of groups previously discriminated against is a subject strongly debated in countries such as South Africa and the United States. The interpretation of racial discrimination (art. 1) and the assertion that affirmative action constitutes "reverse discrimination" should be further investigated; so should the scope of the obligations and the limits to affirmative action under article 2.2. It would be desirable that CERD conduct such a study, exploring also the situation in countries which have not ratified the Convention.

38. Another hotly debated issue is the relationship between freedom of speech and association, on the one hand, and the prevention and prohibition of hate organizations and hate speech on the other. In particular, the role of the mass media in stirring up hatred, and ways in which this can be prevented or countered. (The example of Radio Mille Collines as a contributor to the acts of genocide in Rwanda can be used as an illustration.) Further study of national practices in the light of article 4 of the Convention would be desirable.

39. In the development of programmes for human rights education, it is essential to take into account the provisions of article 7 of the Convention, under which States have undertaken to take measures in the fields of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial groups. It appears highly desirable to study the implementation of this commitment and to evaluate the effectiveness of the measures adopted, with a view to the development of international guidelines for appropriate programmes in this field. It would also be desirable to involve UNESCO in this task.

40. The Sub-Commission has made great achievements regarding the rights of indigenous peoples. The draft United Nations declaration on the rights of indigenous peoples is now before the Commission on Human Rights. It is to be hoped that it will soon be finalized and transmitted to the General Assembly for adoption. In the meantime, further work should be done to develop effective mechanisms for effective monitoring of the implementation of the future declaration.

41. The rights of persons belonging to minorities have been formulated in rather vague terms in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992. These standards require further precision and improved international monitoring. More importantly, there is a need for a better dialogue between minorities and majorities inside States. The Working Group on Minorities of the Sub-Commission is intended to contribute to these tasks. At the completion of its first three-year mandate, in 1997, it will bring to the Sub-Commission and through it to the Commission specific proposals on further action in this field.

42. Several difficult issues have emerged in this context. Some of them could require separate studies. One is the controversial issue of the relationship between the territorial integrity of sovereign and independent States, the principle of non-intervention (which also applies to the so-called "kin States", but is not always respected), the prohibition and prevention of "ethnic cleansing" and the right of peoples to self-determination. A study of this tangled relationship could be helpful in discouraging future violent confrontations between groups inside States.

43. In the light of the frequency of internal armed conflicts, which are often related to ethnic confrontations, it is essential to increase awareness of the minimum standards of humanity which have to be respected by all parties at all times. This issue is now before the Commission after the transmission to it in 1994 by the Sub-Commission of a draft declaration on minimum humanitarian standards. It is to be hoped that a consensus can soon be obtained on this subject.

44. Another important contemporary problem is the vagueness of international law concerning the allocation of citizenship, particularly in new or in newly independent countries. This vagueness generates considerable difficulties for

human rights. Practices concerning citizenship can have a great impact on discrimination between groups. It would be desirable for this issue to be explored in greater depth by the Sub-Commission, initially through a working paper, which would serve as the basis for subsequent discussion.

45. The most serious lacunae in the field of standard-setting or monitoring of relevance to discrimination and xenophobia concern the situation of aliens and stateless persons. It is recommended that the Sub-Commission now give priority attention to the issue of the treatment of such persons, including those who have recently been disenfranchised or denied citizenship in the context of States' newly acquiring or regaining their independence. Not only the civil rights, but also the economic and social rights of these groups need to be investigated. There are serious indications that in some countries aliens and stateless persons are becoming more vulnerable than before.

46. Special attention should be given to the practices of detention and imprisonment of aliens and stateless persons. There appears to be a strong need to investigate the extent of these practices, the causes of detention, the length of detention without or before trial, and the judicial guarantees provided to these prisoners. There are serious indications that aliens and stateless persons make up a growing number of the prison population in many countries, and that in many instances they have little possibility of effective redress. While some aspects of this situation are monitored by UNHCR, many of them fall outside the scope of that Office and have so far not been given proper attention by human rights bodies.

47. The problem of the deportation of aliens, which appears to be occurring to an increasing degree, should also be investigated. Even legally resident aliens are increasingly being deported as an additional sanction when they have committed unlawful acts, in spite of the hardship deportation can cause for their families. The need for restrictions on deportations and expulsions should be investigated. More precise standards and international monitoring appear to be required. This might form another subject which the Sub-Commission could address.

48. The lack of ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families is indicative of the relative neglect by States of the rights of these persons. The situation of migrant workers and "unaccounted workers" should be examined, including their enjoyment of economic and social rights, inter alia the rights to work, to social security, to food and housing, to health and to education. Attention should also be given to their freedom of movement in search of work within the area of regional organizations such as the European Union, compared with the freedom of movement of other workers who are citizens of the member States of the European Union.

49. A final word in conclusion: there are limits to the amount of work the Sub-Commission can do. It is essential that it coordinate its activities with those of other bodies, and that other organs and agencies deal with those issues that they are best equipped to handle. As for the Sub-Commission

itself, studies are important, but a ceiling has been placed on the number of formal studies with financial implications. Authority for such studies to be undertaken can be given only by the Commission on Human Rights and the Economic and Social Council.

50. The Sub-Commission can carry out its work in other ways, however. It is free to establish sessional working groups, though this creates problems for the rest of its work programme because of limits on the amount of interpretation time available. Initiatives can be taken, however, through working papers requested by the Sub-Commission itself or at the initiative of individual members, followed by discussion in its plenary meetings.

51. Ultimately, it is a question of setting priorities within the limited time available to the Sub-Commission. In setting these priorities, the primary mandate - prevention of discrimination and protection of minorities - should guide its work.